

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.

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Copyright Royalty Board

In the Matter of

**DETERMINATION OF ROYALTY RATES  
FOR DIGITAL PERFORMANCE IN SOUND  
RECORDINGS AND EPHEMERAL  
RECORDINGS (WEB IV)**

**Docket No. 14-CRB-0001-WR  
(2016–2010)**

**SIRIUS XM RADIO INC. AND PANDORA MEDIA, INC.'S MOTION TO COMPEL  
SOUNDEXCHANGE TO PROVIDE ALL DOCUMENTS RESPONSIVE TO  
REQUESTS FOR PRODUCTION RELATED TO SUBSTITUTION**

**INTRODUCTION AND SUMMARY**

Pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and (vi) and 37 C.F.R. § 351.5(b) and (c), Sirius XM Radio Inc. (“Sirius XM”) and Pandora Media, Inc. (“Pandora”) (collectively, the “Movants”) hereby request that the Copyright Royalty Judges (“Judges”) compel SoundExchange, Inc. (“SoundExchange”) to provide all memoranda, studies, presentations, reports, and similar documents addressing the issue of the substitutional impact of interactive or non-interactive digital music services on compact disc and download sales and other sources of record company revenue, including such documents in the possession of the various subsidiary and affiliate record companies and record labels within Sony Music Entertainment, Universal Music Group, and Warner Music Group.

The Movants join in iHeartMedia’s Motion To Compel SoundExchange To Produce Documents In Response To Discovery Requests dated November 14, 2014 (“iHeartMedia Motion to Compel”) seeking production of: (1) internal Warner Music Inc. documents showing its valuation of the Warner-iHeartMedia agreement; and (2) documents regarding the

promotional effect of webcasting services from the individuals at the record labels in charge of promotion. The Movants file this motion to further request an order compelling production of related documents in addition to those sought in the iHeartMedia Motion to Compel – namely, documents related to the purported substitutional effect of various types of webcasting services.

SoundExchange's written direct case is fundamentally premised on various claims its witnesses make regarding the alleged substitutional effects of all webcasting services on various sources of record company revenue. SoundExchange argues that webcasting services are not promotional but, instead, are substitutional – i.e., rather than promote record sales and other revenue sources, webcasting services substitute for such sources. Furthermore, SoundExchange relies on benchmarks from the interactive webcasting market, arguing that interactive and non-interactive services have “converged,” including with respect to their substitutional impacts. The Movants vigorously dispute these claims, and believes that the evidence will clearly establish that the two types of services are fundamentally dissimilar, including with respect to substitution (and promotion). The Movants have the right to test these claims in SoundExchange's case by seeking the record companies' own documents concerning these fundamental issues.

SoundExchange does not dispute that such documents relating to the substitutional effect of interactive and non-interactive streaming services are directly related to its written direct case and therefore within the scope of discovery; it has agreed to produce such documents to the extent that they can be located at the top, corporate level of the three major record companies. SoundExchange has refused, however, to search for such documents to the extent they are located at the subsidiary and affiliate record companies and record labels controlled by those corporate parents, based upon the argument that such documents are not within the possession, custody, or control of those corporate parents. This argument strains credulity. There can be no

serious question that the corporate parent record companies have the legal (and practical) ability to obtain these documents from their subsidiary labels. Nor would such a search be unduly burdensome. As noted in the iHeartMedia Motion to Compel, the record company employees most directly tasked with marketing and promotion work at the subsidiary label level, not the top corporate level, and thus the most relevant documents are most likely to reside with a handful of custodians at the label level. *See* iHeartMedia Motion to Compel at 14. Accordingly, the Movants respectfully request that the Judges compel SoundExchange to produce the requested documents which are sought by and responsive to Request Nos. 14, 28, 45, 47-49, 63-64, 92-93, 104, 107, 110, 130 and 133.

Pursuant to 37 C.F.R. § 351.1(b)(1), the Movants certify that the parties have met and conferred on these issues in a good faith effort to resolve the discovery disputes raised in this Motion, including a telephonic meet and confer on November 12, 2014, and subsequent written correspondence. The parties have been unable to reach agreement, necessitating the involvement of the Judges to resolve this discovery dispute.

### **ARGUMENT**

#### **I. THE SUBSTITUTIONAL EFFECT OF WEBCASTING SERVICES ON OTHER SOURCES OF RECORD COMPANY REVENUE IS DIRECTLY RELATED TO SOUNDEXCHANGE'S WRITTEN DIRECT CASE.**

The discovery standard governing this proceeding authorizes a participant to request non-privileged documents that directly relate to the written direct statement of another participant. *See* 17 U.S.C. § 803(b)(6)(C)(v); 37 C.F.R. § 351.5(b). The statute and regulations make clear that a party's written direct statement includes witness statements, exhibits, designated testimony from prior proceedings, and the party's rate proposal. *See* 17 U.S.C. § 803(b)(6)(ii)(11); 37 C.F.R. § 351.4(b).

The claimed substitutional effect of interactive and non-interactive webcasting services on CD and digital download sales and other record company revenues directly relates to the testimony of numerous SoundExchange witnesses:

- We already are witnessing the substitutional effect that streaming services are having on download sales. As reported by Billboard (and illustrated in the following chart), with just one exception, every song in Billboard's "Top 200" list of download sales in 2014 through week 32 had sold fewer downloads than songs in the corresponding place on the same chart in 2013 . . . . Kooker Testimony at 19.
- The rise of digital services has fundamentally altered WMG's view of how to generate revenues from distributing its sound recordings. Whereas in the past WMG was primarily concerned about the sales of physical products, such as CDs, WMG now views each potential distribution model in terms of its impact on all other distribution channels. The wide range of digital services appeal to different consumers, but all have the potential to substitute for one another. Wilcox Testimony at 4.
- The fact is that, in 2014, the ubiquity and high quality of digital distribution have fundamentally transformed the concept of "substitution." Prospective consumers can obtain free access through streaming services—including many that operate pursuant to the statutory license—to a wide range of music whose selection is customized to her or his musical tastes, or that is contained on playlists curated by friends or popular tastemakers. The idea that such unlimited access—without some additional element to incentivize music purchasing—promotes sales is fanciful. *Id.*
- In sum, consumption-based services, including both webcasting and on-demand services, are at the center of the access model to the recorded music industry, where the way we monetize sound recordings is through listening or consumption, as well as sales. At Beggars Group, we are already seeing that model take hold and only expect that trend to continue. Thus, because webcasting and on-demand services compete for consumption, we face an important challenge in our licensing landscape. Wheeler Testimony at 18.
- Beginning in 2013, however, digital sales began to decline as consumers in large numbers began a switch from digital downloads to streaming services. \*\*\* Nielsen SoundScan reports similar substitution from digital downloads to streaming. Blackburn Testimony at ¶ 43.
- . . . competition among and substitution between services have intensified with the continued entry of new services and with the industry transition from sales of downloads and CDs to streaming. Over time, sales are expected to continue to fall. Streaming is expected to become increasingly important, and to dominate the market. Ultimately, as streaming replaces sales, all streaming services can be

expected to be in competition with, and substitute for, other services. Rubinfeld Testimony ¶ 161.

Indeed, in prior proceedings SoundExchange has acknowledged that it was required to produce documents relating to the alleged substitutional effect of digital music services, and based on this acknowledgment, the Judges compelled production of such documents. *See* Order Granting In Part Services' Motion To Compel Production Of Documents Relating To Digital Licensing Strategy, Substitution/Promotion, And Marketplace Studies, *In re Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services*, Docket No. 2011-1 CRB PSS/Satellite II, at 1-2 (March 13, 2012); *see also* Order Granting In Part And Denying In Part Services' Motion To Compel SoundExchange To Provide Specific Information And Documents Concerning The Promotional Value Of Movants' Services, *In re Digital Performance Right in Sound Recordings And Ephemeral Recording For A New Subscription Service*, Docket No. 2005-5 CRB DTNSRA, at 3 (June 14, 2007) (granting motion to compel to the extent the request related to "assertion that 'the music channels programmed by Sirius and XM, and delivered by DirecTV and DISH, inevitably substitute to some degree for CD and digital download sales'").

Notably, SoundExchange has not disputed that documents concerning its claims regarding substitution are within the scope of discovery. Instead, it merely seeks to limit its production of documents to those found at the top, corporate level of the major record companies, and refuses to produce documents that may be found at the subsidiary record label level, the level at which the departments most directly concerned with marketing and promotion actually reside. As demonstrated below, this position is meritless.

## II. THE MOVANTS SERVED DISCOVERY REQUESTS TO TEST THE VALIDITY OF SOUNDEXCHANGE'S KEY CLAIMS.

To evaluate SoundExchange's claims regarding the substitutional effects of interactive and non-interactive streaming services, certain services, including Sirius XM and Pandora, served the First Set of Requests for Production of Documents to SoundExchange, Inc. and Geo Music Group From Licensee Participants (the "Services' Document Requests")<sup>1</sup> relating to, among other things, "the existence or nonexistence of a substitutional or promotional effect by any Digital Service or terrestrial radio on other sources of record company revenue." Services' Document Requests, Request No. 14.

Furthermore, with respect to the testimony of SoundExchange witnesses cited above, the Movants served requests relating to:

- the existence or nonexistence of a substitutional or promotional effect by any Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony) or terrestrial radio on other sources of record company revenue such as sales of CDs and permanent downloads or higher ARPU subscription offerings. Services' Document Requests, Request No. 28.
- the contention on page 9 of the Harrison testimony that "we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services," including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another. Services' Document Requests, Request No. 45.
- the contention on page 9 of the Harrison testimony that "Pandora is streaming music to users who might otherwise pay for a subscription or use a higher ARPU streaming service," including all studies, analyses, memoranda or documents otherwise concerning whether and how Pandora or other webcasters do or do not substitute for paying subscriptions or use of services with higher ARPU. Services' Document Requests, Request No. 47.

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<sup>1</sup> Relevant portions of which are annexed as Exhibit A to the Declaration Of Jackson D. Toof In Support Of The Movants' Motion To Compel SoundExchange To Produce Documents Responsive To Requests For Production Related To Substitution ("Toof Decl.").

- the contention on page 10 of the Harrison testimony that “on-demand services like Spotify compete directly with statutory webcasters like Pandora,” including all studies, analyses, memoranda or documents otherwise concerning such competition, and any competition between other statutory services and on-demand services like Spotify. Services’ Document Requests, Request No. 48.
- the contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services. Services’ Document Requests, Request No. 49.
- the similarities, differences, and degree of competition or substitution between webcasting and on-demand streaming services as Mr. Wheeler uses those terms. Services’ Document Requests, Request No. 63.
- the potential or actual substitution of any Digital Service for any other Digital Service, or the impact of any Digital Service usage on sales of sound recordings in physical or digital format, including but not limited to document related to Mr. Wheeler’s statement in paragraph 42 of his Testimony that “streaming music on one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service, such as an on-demand service. Indeed, it is the incentive of the webcaster to do the exact opposite. . . .” Services’ Document Requests, Request No. 64.
- terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market. Services’ Document Requests, Request Nos. 92, 93.
- the extent to which services in the category promote and/or substitute for other forms of consumer music consumption for each category of Digital Service described in Rubinfeld Testimony ¶ 16 and Appendix 2. Services’ Document Requests, Request No. 104.
- the claim that physical sales of music and other sources of record label revenue are being “replaced” by streaming, Rubinfeld Testimony ¶¶ 46, 138, including, documents relating to or quantifying the effect (promotional or substitutional) of various types of streaming services on revenue from and audience/listenership for owned music purchases (including sales of downloads and CDs), live concerts, interactive music services (including both ad-supported and subscription-based services), terrestrial radio, satellite radio, and other forms of non-interactive webcasting, or any difference in such effect between simulcasts of radio broadcasts and custom webcasting. Services’ Document Requests, Request No. 107.

- Dr. Rubinfeld's contentions in ¶¶ 21, 52-74, 91, 140, and 160-61 of his testimony that interactive and non-interactive services "compete" with each other and that there is "increasing convergence between" and "substitution among" interactive and non-interactive services. Services' Document Requests, Request No. 110.
- Dr. Blackburn's assertions concerning the alleged "convergence" between non-interactive webcasters and interactive webcasters. Services' Document Requests, Request No. 130.
- Dr. Blackburn's assertions he finds "little support for the suggestion that statutory webcasting serves a primarily promotional role to other record label revenue sources," that the "evidence suggests, at both a macro and micro level, that statutory webcasting does not tend to increase digital downloads," and that "the record is clear that statutory webcasters, such as Pandora, serve to cannibalize industry revenues earned through directly licensed interactive streaming services." Services' Document Requests, Request No. 133.

### **III. SOUNDEXCHANGE FAILED TO PROVIDE THE REQUESTED DISCOVERY.**

In light of the extensive testimony proffered by SoundExchange's witnesses on the topic of substitution, and the centrality of those claims to SoundExchange's case, the Movants are entitled to discovery testing these assertions concerning the substitutional effects of interactive and non-interactive webcasting services, including those documents located at the subsidiary record label level of the major record companies.

Rather than provide all of the documents that would permit the Movants to test its claims, SoundExchange has improperly limited the scope of its production. SoundExchange acknowledges the relevance of substitutional documents by agreeing to produce documents related to the "substitutional or promotional effect of streaming music services" found at the corporate level of the three major record companies. *See* SoundExchange, Inc.'s Responses and Objections to Licensee Participants' First Set of Requests for Production of Documents ("SX Responses and Objections"), Response No. 14. SoundExchange refuses, however, to even search for these documents at the subsidiary record label level, where the employees most directly involved in marketing and promotion actually work. *Id.*; *see also* SX Responses and Objections, Objection Nos. 23, 33.



iHeartMedia, joined by Pandora, NAB and Sirius XM, addressed SoundExchange's deficient responses to the Services' Document Requests by letter dated November 11, 2014.<sup>2</sup> On November 12, 2014, Sirius XM and Pandora, along with iHeartMedia and NAB, raised these issues during a telephonic meet and confer. During that meet and confer, the Movants offered to consider limiting the requests regarding substitution to memoranda, studies, presentations, reports, and similar documents, in an effort to minimize the burden of searching for responsive documents. On November 13, 2014, SoundExchange confirmed by letter that it would only conduct a search at the corporate level.<sup>3</sup>

SoundExchange objects to searching for the requested documents at the record label level on the ground that "[s]ubsidiary and/or affiliate recording companies and record labels within Sony Music Entertainment, Universal Music Group, and Warner Music Group are distinct entities and the documents of these distinct entities *are not within the custody and/or control of SoundExchange and/or its witnesses.*" SX Responses and Objections, Objection Nos. 23 (emphasis added).

SoundExchange's objection should be rejected because "documents are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party to the action." *Ssangyong Corp. v. Vida Shoes Int'l, Inc.*, No. 03 Civ. 5014, 2004 WL 1125659, at \*3 (S. D. N.Y. May 20, 2004) (citing *Bank of New York v. Meridien Biao Bank Tanzania*, 171 F .R.D. 135, 146 (S. D. N. Y. 1997)). Indeed, "many courts have concluded that the parent of a wholly-owned subsidiary is required to produce documents which its subsidiary possesses." See *In re Ski Train Fire of Nov. 11, 2000 Kaprun Austria*, No. MDL 1428, 2006 WL 1328259, at \*5 (S. D. N. Y. May 16, 2006) (collecting cases).

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<sup>2</sup> Annexed as Exhibit C to the Declaration of Jackson D. Toof ("Toof Decl.").

<sup>3</sup> Annexed as Exhibit D to the Toof Decl.

The court in *Ssangyong* found, as the Judges here should find, the assertion that the defendant did not control documents in possession of its affiliate to be “*inconceivable*, just as judges in similar cases have found similar assertions to be inconceivable.” 2004 WL 1125659, at \*13 (citing *Cooper Industries, Inc. v. British Aerospace*, 102 F.R.D. 918, 919-920(S.D. N.Y. 1984); *Alcan International Ltd. v. S.A. Day Mfg. Co., Inc.*, 176 F.R.D. 75, 78 (W.D. N.Y. 1996)) (emphasis added). It is similarly inconceivable that Sony Music Entertainment, Universal Music Group, and Warner Music Group do not have custody or control over documents in the files of their subsidiary and/or affiliate recording companies and record labels. SoundExchange refused to search at the subsidiary record labels, knowing that it is at that level that the key marketing and promotion employees work. Consequently, it is at this level that the most relevant documents are likely to reside. There can be no serious doubt that if Sony Music Entertainment, Universal Music Group, and Warner Music Group needed the assistance or cooperation of their respective subsidiary and/or affiliate recording companies and record labels, they would receive such assistance – in the form of providing documents in subsidiary’s or affiliate’s custody or otherwise. *See In re Ski Train Fire of Nov. 11, 2000 Kaprun Austria*, 2006 WL 1328259, at \*8.

Nor would production of these documents, particularly if limited to memoranda, studies, presentations, reports, and similar documents (as opposed to email and other correspondence relating to these topics), be unduly burdensome. As noted above, the issue of the substitutional effects of interactive and non-interactive webcasting services is central to SoundExchange’s written direct case. As noted by iHeartMedia in its motion to compel, the search need not be extensive: there are a handful of department managers who would be the most likely custodians of such documents. iHeartMedia Motion to Compel at 14. There can be little doubt that the need for the requested documents outweighs the burden associated with their production.

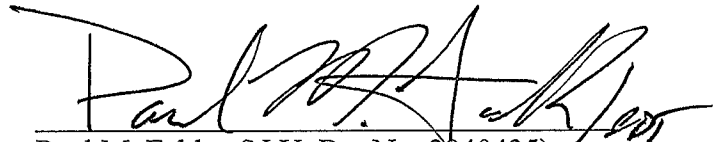
## CONCLUSION

SoundExchange's refusal to produce the requested documents is wholly inappropriate given the material's direct relevance to this proceeding and its witnesses' testimony concerning the alleged substitutional effects of interactive and non-interactive webcasting on other sources of record company revenue. Without these documents, the Movants will be hindered in their ability to fairly rebut SoundExchange's case and the Judges will not have all the evidence necessary to determine the appropriate rate for the licenses at issue in this proceeding.

For the foregoing reasons, Sirius XM and Pandora respectfully requests that the Judges compel SoundExchange to produce all memoranda, studies, presentations, reports, and similar documents addressing the issue of the substitutional impact of interactive or non-interactive digital music services on compact disc and download sales and other sources of record company revenue, including such documents in the possession of the various subsidiary and affiliate record companies and record labels within Sony Music Entertainment, Universal Music Group, and Warner Music Group, which are sought by and responsive to Request Nos. 14, 28, 45, 47-49, 63-64, 92-93, 104, 107, 110, 130 and 133.

*[Signature on following page]*

Dated: November 18, 2014



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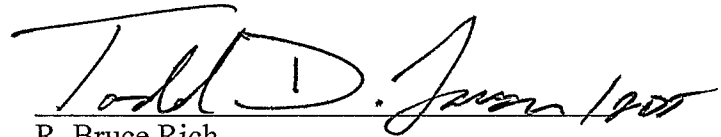
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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.

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In the Matter of )  
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DETERMINATION OF RATES AND TERMS )  
FOR DIGITAL PERFORMANCE IN SOUND )  
RECORDINGS AND EPHEMERAL )  
RECORDINGS (WEB IV) )  
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Docket No. 14-CRB-0001-WR

**DECLARATION OF JACKSON D. TOOF IN SUPPORT OF  
THE MOVANTS' MOTION TO COMPEL SOUNDEXCHANGE  
TO PRODUCE DOCUMENTS RESPONSIVE TO  
REQUESTS FOR PRODUCTION RELATED TO SUBSTITUTION**

I, JACKSON D. TOOF, declare:

1. My name is Jackson Toof. I am a partner of Arent Fox LLP, counsel to Sirius XM Radio Inc. ("Sirius XM") in the above-captioned proceeding.
2. I respectfully submit this Declaration in support of the Movants' Motion To Compel SoundExchange To Produce Documents Responsive To Requests For Production Related To The Claimed Substitution Effect Of Streaming Services On Digital Download Sales.
3. Sirius XM and Pandora Media, Inc. ("Pandora") (the "Movants") move pursuant to 17 U.S.C. § 803(b)(6)(C)(v) and 37 C.F.R. § 351.5(b) and (c).
4. This Declaration is made based upon my personal knowledge.
5. On November 12, 2014, counsel for Sirius XM, along with counsel for Pandora, iHeartMedia, Inc. ("iHeartMedia"), the National Association of Broadcasters ("NAB"), participated in a telephonic meet and confer with counsel for SoundExchange on discovery

issues, including the production of documents relating to SoundExchange's claim of streaming services having a substitutional effect on digital download sales, among other issues.

6. Sirius XM asked SoundExchange to explain, particularly with respect to documents related to the promotional or substitutional effects of various digital music services, what kinds of responsive documents SoundExchange has deemed to be not directly related to its written direct case (because it seems to Sirius XM that any such documents are directly related).

7. SoundExchange has not provided any explanation.

8. With respect to those same documents (related to any substitutional effects of various digital music services), Sirius XM asked if SoundExchange would at least produce any memoranda, studies, presentations, or similar documents related to these topics (as opposed to all email correspondence discussing these topics), from the individual record labels where the promotion and marketing employees actually work.

9. Despite Sirius XM's offer to limit the scope of the requests, SoundExchange has refused to produce any documents on promotion or substitution from the individual record labels.

10. Attached hereto as **Exhibit A** for the convenience of the Judges are the relevant pages from the First Set Of Requests For Production Of Documents To SoundExchange, Inc. And Geo Music Group From Licensee Participants (the "Services' Document Requests") on behalf of Pandora, NAB, and iHeartMedia, Sirius XM, the National Religious Broadcasters Noncommercial Music License Committee, National Public Radio, Intercollegiate Broadcasting System, Inc., AccuRadio, and Harvard Radio Broadcasting Co., Inc..

11. Attached hereto as **Exhibit B** for the convenience of the Judges are the relevant pages from SoundExchange's responses and objections to the Services' Document Requests.

12. Attached hereto as **Exhibit C** for the convenience of the Judges is iHeartMedia's letter, joined by Pandora, NAB and Sirius XM, dated November 11, 2014, to SoundExchange regarding SoundExchange's deficiencies in responses to discovery requests.

13. Attached hereto as **Exhibit D** for the convenience of the Judges is SoundExchange's letter dated November 13, 2014, responding to iHeartMedia, Pandora, NAB and Sirius XM's November 11 letter.

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 350.4(e)(1), I hereby declare under the penalty of perjury that, to the best of my knowledge, information and belief, the foregoing is true and correct.

Dated: November 18, 2014

Respectfully submitted,

Sirius XM Radio Inc.

By: 

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Sirius XM Radio Inc.*

# EXHIBIT A



## PUBLIC VERSION

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.

In re

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF  
SOUND RECORDINGS (*WEB IV*)

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) Docket No. 14-CRB-0001-WR (2016-2020)  
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**FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
SOUNDEXCHANGE, INC. AND GEO MUSIC GROUP FROM LICENSEE  
PARTICIPANTS**

Pursuant to Chapter 8 of the Copyright Act, 17 U.S.C. § 801 et seq., 37 C.F.R. § 351.5, the Copyright Royalty Judges' Scheduling Order dated August 29, 2014, and the Parties' agreement concerning the discovery schedule as submitted to the Judges on July 29, 2014 (the "Discovery Schedule"), you are required to respond to the following Document Requests propounded by the licensee participants in this proceeding. Pursuant to the Discovery Schedule, your written responses and documents responsive to these Requests must be delivered to counsel for Pandora Media Inc., iHeart Media, Inc., the National Association of Broadcasters, Sirius XM Radio Inc., the National Religious Broadcasters Noncommercial Music License Committee, National Public Radio, Intercollegiate Broadcasting System, Inc., AccuRadio, and Harvard Radio Broadcasting Co., Inc. on or before November 7, 2014.

**DEFINITIONS**

1. "Digital Service" means any service providing users with access to digital audio transmissions or digital phonorecord deliveries of sound recordings and/or music videos, whether for free or by subscription, whether by streaming or download (either permanent or temporary),

whether offering a single type of music service or bundling together different music services (e.g., streaming and downloads), and whether available on a personal computer, television, receiver, set-top box, mobile/cellular phone, other mobile device (iPad, smartphone, tablet computer, laptop, etc.), or any other device or platform. Digital Services include but are not limited to services offering digital downloads, cloud services, providers of ringtones, mastertones and ringbacks, interactive streaming services (e.g., Rhapsody, Napster, Spotify, Mog, Rdio), all statutory, non-interactive, and customized varieties of internet radio/webcasting (e.g., Pandora, Slacker, Last.fm, radio station simulcasters, iHeart Radio, 8Tracks, Turntable.fm), music video providers (e.g., YouTube, Vevo), and mobile/cellular providers (e.g., Verizon, AT&T). Digital Services shall not include PSS's (e.g., Music Choice) or Business Establishment Services (e.g., Muzak, DMX, PlayNetwork).

2. "Document" or "Documents" shall have the same meaning as the term "document" in Rule 34(a)(1) of the Federal Rules of Civil Procedure and shall include all such items, including electronically-stored information, that would be subject to inspection and copying under that Rule, including the original and any non-identical copy of, any written, printed, typed, photographed or recorded materials, including but not limited to writings, notes, memoranda, agreements, contracts, drafts, mark-ups, redlined materials, proposals, offers, meeting minutes, agendas, reports, calendar or diary entries, drawings, graphs, charts, logs, photographs, phone records, tape recordings, computer disks, computer printouts or tape, email or any other data compilations from which information can be obtained or translated. The term "Document" also means every copy of a document where such copy is not an identical duplicate of the original, whether because of deletions, underlinings, showing of blind copies, initialing,

signatures, receipt stamps, comments, notations, differences in stationary or any other difference or modification of any kind.

3. "GEO Music Group" means Geo Music Group and its predecessors, including its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

4. "Noncommercial Broadcaster means a Noncommercial Digital Service that owns or operates one or more noncommercial terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission or otherwise meets the definition at 47 U.S.C. § 397(6), (7), (11), or (12).

5. "Noncommercial Digital Service" means a Digital Service that meets the requirements of 17 U.S.C. § 114(f)(5)(E)(i)(I), (II), or (III).

6. "Record Company" means any SoundExchange member company (as contrasted to recording artist members) that owns sound recording copyrights, including any and all subsidiary or affiliate recording companies and labels, and including but not limited to Sony, UMG, and WMG. Any references to a Record Company specifically by name (for example, the employer company of a witness who submitted a statement as part of SoundExchange's written direct statement) shall likewise be construed to include any and all subsidiary and/or affiliate recording companies and/or labels owned by the parent company.

7. "Recording Industry Association of America" or "RIAA" mean the Recording Industry Association of America, Inc. and its directors, officers, shareholders, employees, personnel, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on their behalf.

8. "Sony" shall mean Sony Music Entertainment and its predecessors (including Sony BMG Music Entertainment), including its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

9. "Statutory Licenses" are the licenses available under 17 U.S.C. § 114(d)(2) and § 112(e) for services offering eligible digital audio transmissions. "Statutory Licensees" or "Statutory Services" are services making digital audio transmissions pursuant to the Statutory Licenses.

10. "SoundExchange," "you" and "your" mean SoundExchange, Inc., SoundExchange Witnesses and their respective employer companies, and SoundExchange's directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

11. "SoundExchange Witness" means any of the witnesses who have supplied and/or will supply testimony on behalf of SoundExchange in this proceeding, including, but not limited to, the witnesses listed by SoundExchange in its "Index of Witness Testimonies."

12. "Warner" and "WMG" means Warner Music Group Corp and its directors, officers, board members, committee members, employees, subsidiaries (including but not limited to Atlantic Recording Corp. ("Atlantic") and Elektra Records ("Elektra")), parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

13. “Universal” and “UMG” means Universal Music Group and its directors, officers, board members, committee members, employees, subsidiaries, parent corporations, divisions, affiliated companies, agents, servants and anyone else acting on its behalf.

14. Whenever appropriate in these requests, the singular form shall include the plural and vice-versa. The connectors “and” and “or” are terms of inclusion and not exclusion, and shall be construed as necessary to bring within the scope of each request each document and things that if construed otherwise might be considered to be outside of its scope. “Including” means “including but not limited to.” The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Document Request.

### **INSTRUCTIONS**

1. These requests are intended to supplement the production by SoundExchange of all materials that were relied upon by SoundExchange Witnesses in the creation of their written testimony, as ordered by the Judges. The absence of specific requests for materials relied upon by SoundExchange witnesses in formulating each contention in their written testimony does not waive the licensee participants’ right to such materials; to the extent the licensee participants find it necessary to assert follow-up requests for such relied-upon materials, those requests shall not count against the 200 limit on document requests as agreed by the participants.

2. These requests are continuing in nature, and in the event SoundExchange becomes aware of additional responsive information or documents at any time through the conclusion of this proceeding, SoundExchange is requested promptly to provide such additional information or documents.

3. The responses to each request shall include Documents that are within the possession, custody or control of SoundExchange, RIAA, or any Record Company related to

testimony provided by witnesses from such Record Company, including, without limitation, Documents that are in the possession, custody or control of SoundExchange's, RIAA's or such Record Company's attorneys, agents, directors, officers, employees, representatives, or any other persons or entities directly or indirectly employed by or connected with SoundExchange, RIAA or such Record Company.

4. Each request should be answered separately and in order.

5. If SoundExchange objects to any request or sub-part thereof on a claim of any privilege, including an assertion of the attorney-client privilege or a claim that responsive Documents constitute attorney work product, SoundExchange is hereby requested to provide at the time of production the basis for the asserted privilege or immunity, set forth for each withheld document, including the following information: (i) the date of the Document; (ii) the name of the Document's originator, the name of the person(s) to whom it is addressed, the names of all person(s) who were shown copies or to whom copies were distributed and the names of each person participating in the preparation of the document or in whose name the document was prepared; (iii) a general physical description of the type of Document, and the subject matter to which it pertains; (iv) the Document's current custodian; and (v) a statement of the precise basis upon which the document has been redacted or withheld, including the specific nature of the privileged or immunity claimed and the detailed ground for claiming such privilege or immunity.

6. If, for any reason other than a claim of privilege, you refuse to respond to any request herein, state the grounds upon which such refusal is based with sufficient particularity to permit a determination of the propriety of such refusal.

7. If, in answering these requests, you claim that any request, or a definition or instruction applicable thereto, is ambiguous, do not use such claim as a basis for refusing to

respond, but rather set forth as a part of the response the language you claim is ambiguous and the interpretation you have used to respond to the individual request.

8. Each of the foregoing definitions and instructions is hereby incorporated by reference into, and shall be deemed a part of, each and every other definition and instruction contained herein as well as each specific request set forth below.

9. Unless otherwise stated, the period covered by these requests is from January 1, 2009 to the present.

10. The terms “any,” “each,” or “all” shall be construed as terms of inclusion, not as exclusion.

## **REQUESTS FOR DOCUMENTS**

### **Document Requests Related to SoundExchange’s Rate Proposal for Noncommercial Webcasters**

1. Each document reflecting the consideration given, if any, by SoundExchange (including any officers, directors, Board members, or employees of SoundExchange) or any SoundExchange witness (including SoundExchange’s experts), in connection with the development of SoundExchange’s proposed rates and terms as are applicable to NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete noncommercial broadcaster group regarding whether and/or how NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete Noncommercial Broadcaster group were (or should be) considered or treated in any fashion different or separate from other Noncommercial Webcasters covered by SoundExchange’s proposed rates and terms for Noncommercial Webcasters (as set forth in Section II.B of the Proposed Rates and Terms of SoundExchange, Inc., filed on October 7, 2014).

2. Each document constituting, reflecting, discussing, or otherwise relating to any communication between SoundExchange and any SoundExchange witness concerning Noncommercial Broadcasters, other Noncommercial Digital Services, or the rates and terms that apply, should apply, or are under consideration to apply to such services under the Statutory Licenses.

3. Each document concerning any analysis, study, or other consideration by SoundExchange or any SoundExchange fact or expert witness of (i) the similarities or differences between (a) commercial Digital Services and (b) Noncommercial Broadcasters or other Noncommercial Digital Services as they relate to the Statutory Licenses and (ii) the rates

23. All documents that refer or relate to the calculation of the expenses directly related to digital distribution referenced on page 9 of Mr. Kooker's testimony and documents sufficient to show the calculation of such expenses from each year from 2009 to the fiscal year ended March 2014, and any subsequent fiscal quarter, and any forecasts of future amounts of such expenses.

24. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to Mr. Kooker's contentions concerning the "Shift from Ownership to Access Models" on pages 10 through 13 of his testimony, including without limitation his contentions that "[b]ased on market trends, we expect the decline in permanent download sales to be permanent" (p. 12) and "Sony Music anticipates that the movement away from ownership and toward access models will further accelerate over the course of the next statutory rate term." (p. 13).

25. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the contentions on page 14 of Mr. Kooker's testimony that (i) "We have found that streaming services cannot generate revenues sufficient to compensate us for the value of our music . . . [,]" (ii) "[s]treaming services are unable to significantly increase their ARPU through advertising alone[,]" or to the analysis or calculation of ARPU for various Digital Services also referenced on page 14.

26. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the contention that a "convergence" of statutory and directly licensed Digital Services exists as described on page 16 of Mr. Kooker's testimony, including the ways in which the services are converging, whether the services are reasonably interchangeable, whether positive cross-elasticity of demand exists, customer views of the convergence, market research about the convergence, Mr. Kooker's expressed expectation that the convergence will continue through the coming rate period, and the impact of the convergence.

27. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to Mr. Kooker's contentions on pages 15 through 17 of his testimony, concerning the (i) effects of the statutory licenses on direct licensing and (ii) competition between statutory services and Sony Music's directly licensed partners, including without limitation, (a) the effect of the statutory rates on privately negotiated rates, (b) the effect of statutorily licensed services on the conversion of on-demand services' users to subscription tiers or otherwise to generate higher ARPU, (c) the effect of the statutory streaming royalties on Sony's investment in developing sound recordings, and (d) the contentions on page 17 that (1) "It is difficult for direct licensees to convince users that the differences [between the overall consumer offerings of direct licensees' services and statutory services] are worth paying for," (2) "Users perceive costs to switching" from free digital services to subscription services, and (3) "Direct licensees find themselves competing for listeners with closely comparable services that pay substantially reduced rates and that make little or no effort to convert free listeners to paying subscribers."

28. All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the existence or nonexistence of a



substitutional or promotional effect by any Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony) or terrestrial radio on other sources of record company revenue such as sales of CDs and permanent downloads or higher ARPU subscription offerings.

29. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

30. For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony's Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

31. All documents related to the statement on pages 6-7 of Mr. Kooker's written direct testimony that "the highest ARPU is generated from paying subscribers of directly licensed services," including without limitation, all calculations of the ARPU for periods since January 1, 2009, for each Sony Music or Sony Subsidiary Label agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony).

32. For each Sony agreement with a Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony), documents sufficient to show Sony Music's valuations, if any, of the following provisions of such agreements discussed by Mr. Kooker at pages 21-23 of his written direct testimony (or the additional consideration Sony receives when such provisions are not present): (a) payment structure based on [REDACTED] (b) terms "intended [REDACTED] including without limitation, [REDACTED]"; (c) specification of audio quality; (d) security provisions; and (e) [REDACTED] (f) reporting requirements; (g) auditing rights; (h) access to consumer data; and (i) duration of agreement terms.

39. For each Warner agreement with a Digital Service (including any “digital services,” “digital distribution services,” or digital partners” as Mr. Wilcox uses those term in his written direct testimony, e.g., at pages 4-7), documents sufficient to show Warner’s valuations, if any, of the following provisions of such agreements discussed by Mr. Wilcox at pages 6-7 of his Written Direct Testimony (or the additional consideration Warner receives when such provisions are not present): (a) payment structure based on [REDACTED] (b) [REDACTED] (c) [REDACTED] (d) access to data; (e) security provisions; (f) holdback rights; (g) reporting requirements; (h) audit rights; and (i) short-term licenses.

**Document Requests Directly Related to the  
Written Witness Testimony of Aaron Harrison**

40. All new partner questionnaires as described by Mr. Harrison in paragraph 23 of his testimony.

41. For each Universal (or any Subsidiary Label) agreement with a Digital Service, all calculations of the “effective rate” paid and ARPU (as described by Mr. Harrison at pp. 8 and 17-18 of his testimony) for periods since January 1, 2009.

42. For each Universal (or any Subsidiary Label) agreement with a Digital Service, documents sufficient to show Universal’s valuations, if any, of the following provisions of such agreements discussed by Mr. Harrison at pp. 17-24 of his testimony (or the additional consideration WMG receives when such provisions are not present): (a) advances, minimum guarantees, flat fees, and shortfall payments; (b) marketing commitments and guarantees; (c) holdback rights; (d) user data; (e) security precautions; (f) short deal terms; and (g) fan engagement, including but not limited to user emails.

43. In relation to Mr. Harrison’s contentions regarding Security Guarantees on p. 22, documents sufficient to show all instances where a statutory webcaster allowed users to “capture or download” content, offered its service in other territories, was hacked, or used “unencrypted progressive downloads” in a way that led to any Universal (or other) recordings being captured or hacked by users.

44. All studies, analyses, surveys, presentations, memoranda or other documents related to Mr. Harrison’s contention on pp. 4-6 that the market for recorded music is shifting from an “ownership model to an access model.”

45. All documents related to the contention on page 9 of the Harrison testimony that “we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services,” including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another.

46. Documents from January 1, 2009, to the present concerning Universal’s “approach to the market for the distribution of recorded music” (Harrison testimony page 4), including but not limited to strategic plans, presentations, memos, analyses, etc., whether for Universal, any of its labels, or industry-wide.

47. All documents related to the contention on page 9 of the Harrison testimony that "Pandora is streaming music to users who might otherwise pay for a subscription or use a higher ARPU streaming service," including all studies, analyses, memoranda or documents otherwise concerning whether and how Pandora or other webcasters do or do not substitute for paying subscriptions or use of services with higher ARPU.

48. All documents related to the contention on page 10 of the Harrison testimony that "on-demand services like Spotify compete directly with statutory webcasters like Pandora," including all studies, analyses, memoranda or documents otherwise concerning such competition, and any competition between other statutory services and on-demand services like Spotify.

49. All studies, analyses, surveys, presentations, memoranda or other documents related to the following contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services:

- a. "Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music" (p. 5)
- b. "If a user has 'customized' her or his preferences through a streaming service, the user knows they have a good chance of hearing songs they like, or others like them, and thus see a diminished need to own a particular recording"
- c. "these services are drawing consumers and revenue away from the sale of permanent downloads and CDs"
- d. "on-demand and customized streaming services do not promote sales of downloads"
- e. The requested documents include, without limitation, all documents concerning the potential or actual substitution of any Digital Service for any other Digital Service and/or sales of compact discs, vinyl records or digital downloads.

50. All documents, including without limitation any studies, analyses, surveys, presentations, memoranda or other documents, related to the statement in paragraph 13 of Mr. Harrison's testimony that "we have found that streaming services cannot generate sufficient ARPU through advertising alone."

**Document Requests Directly Related to the  
Written Direct Testimony of Jeffrey Harleston**

51. Each document related to Mr. Harleston's assertion in paragraph 5 of his testimony that there is a "significant investment involved in developing new music" as well as "inherent risks" and his assertions in paragraph 35 of his testimony that UMG's revenues "have declined dramatically" and that "[t]his decline only increases the pressure on us to manage our costs and our losses wisely," including, for each year from 2009 to the present, annual financial statements (including balance sheets, income statements, profit and loss statements, and cash flow statements), strategic or business plans, and projections for Universal Music Group ("UMG") and, to the extent separately maintained, for any UMG subsidiary label (including, but not limited to, Motown Records, Interscope Records, Island Records, Def Jam Records, Geffen Records, A&M Records, Capitol Records, Virgin Records, Mercury Nashville, Universal Music

marketing plans, business plans, reports, studies, analyses, presentations, surveys, memoranda, budgets, financial statements, or other documents related to such efforts and their impact on sound recording sales.

**Document Requests Directly Related to the  
Written Direct Testimony of Simon Wheeler**

60. All documents relating to the recent license agreement between Pandora and MERLIN, including but not limited to communications among or between MERLIN, MERLIN members, or the MERLIN Board of Directors, and including but not limited to Beggars Group's decision whether to opt in to the Pandora-MERLIN license agreement.

61. All documents relating to other licensing deals negotiated between MERLIN and any Digital Service since 2009 that Beggars Group has "opted into" (or not) as discussed at p. 4 of Mr. Wheeler's testimony, including but not limited to documents reflecting the decision by Beggars Group of whether to opt in to the deal.

62. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Mr. Wheeler's contention in paragraph 32 of his Testimony that "in the United States . . . consumers seem more willing to accept 'lean-back' music experiences instead of adopting the on-demand models that are more prevalent in Europe" and that "there is more of a 'lean back' mentality in the United States."

63. All studies, analyses, surveys, memoranda or other documents related to the similarities, differences, and degree of competition or substitution between webcasting and on-demand streaming services (as Mr. Wheeler uses those terms), including but not limited to documents relating to Mr. Wheeler's contentions that:

- a. webcasting services "are now attempting to offer enough of a complete music experience . . . to draw consumers away from the higher-revenue-per-consumption services, such as on-demand subscription services" (paragraph 31)
- b. "[t]here is a real danger that webcasting services provide enough functionality such that most consumers will not need or will choose not to look to on-demand subscription services" (paragraph 35)
- c. "the distinction between [webcasting services and on-demand subscription services] is less and less a meaningful difference for consumers" (paragraph 36)
- d. Mr. Wheeler "would expect that a negotiating framework for webcasting would largely approximate the on-demand service framework" (paragraph 36)
- e. "statutory webcasting does offer slightly less functionality (i.e., no on-demand) but there is not really much other difference" (paragraph 38)
- f. "webcasting and on-demand services compete for consumption" (paragraph 40)

64. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to the potential or actual substitution of any Digital Service for any other Digital Service, or the impact of any Digital Service usage on sales of sound recordings in physical or digital format, including but not limited to document related to Mr. Wheeler's statement in paragraph 42 of his Testimony that "streaming music on

one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service, such as an on-demand service. Indeed, it is the incentive of the webcaster to do the exact opposite. . . .”

**Document Requests Directly Related to the  
Written Direct Testimony of Fletcher Foster**

65. Annual financial statements for Iconic Entertainment Group (“Iconic”) for the years 2009 to 2014 and any forecasts covering any of the time period 2016-2020 and documents sufficient to show Iconic’s revenue, directly or indirectly, from statutory licensing (webcasting, SDARS, PSS, any other), digital downloads, other digital sources (interactive streaming, ringtones), sales of physical units (CDs, records), touring and live performances, merchandise sales, and any other categories of revenue for Iconic for the years 2009 to the present and any forecasts covering any time period from 2016-2020; and documents sufficient to show for the years 2009 to present the amount of expenditure by cost accounting category used for all costs and expenses associated with such revenue.

66. Documents sufficient to show, for each recording artist represented by or affiliated with Iconic, including those discussed in paragraphs 16-20 of Mr. Foster’s testimony, such artist’s revenue from 2009 to the present, and any forecasts for such revenue covering any time period from 2016-2020 that are related to the artist’s music, including revenue from statutory licensing (webcasting, SDARS, PSS, any other), digital downloads, other digital sources (interactive streaming, ringtones), sales of physical units (CDs, records), touring and live performances and merchandise sales.

67. Documents sufficient to show the amounts of Iconic’s “significant investment” in artists as referenced in paragraph 16 of Mr. Foster’s testimony, for the years 2009 to the present, including any analysis of the return on investment, success/failure rate of artists invested in, or other financial metrics related to the investments, and the effect of statutory streaming royalties on Iconic’s investment.

68. All agreements, and any amendments thereto, between Iconic and any of the artists referenced in Mr. Foster’s testimony, including Taps, Levi Hummon, Emily West, and LeAnn Rimes.

**Document Requests Directly Related to the  
Written Direct Testimony of Darius Van Arman**

69. All agreements in effect or entered into between 2009 and present between Secretly Group, including the Secretly subsidiary labels and affiliates, and any third party related to the distribution (including both physical and digital distribution) of sound recordings, including without limitation the agreements with Warner, Independent Distribution Cooperative, and Alternative Distribution Alliance reference on page 7 of Mr. Van Arman’s testimony, and all documents, including without limitation correspondence with third parties, concerning the negotiation, consideration, or analysis of such agreements.

subsidize costs associated with processing payments and information from smaller services ....”).

87. Each document related to Mr. Bender’s assertion on page 9 of his testimony that “a service’s royalty payments for a given distribution period are allocated to sound recordings used by that service during that period and to SoundExchange’s costs deductible under Section 114(g)(3),” including, but not limited to, documents sufficient to show the method(s) by which SoundExchange allocates those royalties to its deductible costs.

88. Each document related to Mr. Bender’s derivation of his \$11,778 per licensee and \$1,900 per station or channel cost estimates on pages 15-18 of his testimony, including, but not limited to, documents sufficient to show how Mr. Bender derived those estimates, the identity of each of the 2,547 licensees that Mr. Bender used in his estimates, the identity of each licensee for which Mr. Bender used multiple stations or channels to calculate his cost estimates, the number of stations or channels that Mr. Bender used for each licensee in deriving his \$1,900 cost estimate, and the identity of each licensee as to which Mr. Bender assumed operated 100 stations or channels (*see* p. 18).

89. For each year from 2012 to the present, documents sufficient to identify each copyright owner or artist who received at least one monthly distribution, the amounts of each such distribution, and the identities of all other SoundExchange rights owner members, artist members, and non-member that did not receive at least one monthly distribution. Bender Test. at 10.

90. Each document related to Mr. Bender’s assertions on page 20 of his testimony regarding SoundExchange’s proposal to require royalty payments within 30 days of the close of a reporting period, including, but not limited to, for each year from 2009 to the present, documents sufficient to show the number, identity, and proportion of licensees whose royalty payments are processed within 30 days as well as the average time that it takes SoundExchange to distribute at least 90% of a royalty payment from a licensee, calculated from the time that SoundExchange received that royalty payment and expressed as an average across all licensees.

91. For each year from 2009 to the present, documents sufficient to show the identities of each royalty recipient as to which SoundExchange adjusted any distributed royalty amounts, the amounts of each such adjustment, and the amount of time between when SoundExchange first received the applicable royalty payment and when each adjustment was applied, as discussed by Mr. Bender on page 9 of his testimony.

**Document Requests Directly Related to the Written Direct Testimony of SoundExchange Expert Witnesses (Rubinfeld, Lys, Blackburn, McFadden)**

92. All published or unpublished scholarly articles or drafts, books or chapters of books, papers under review, working papers, course materials or presentations written in whole or in part by any of SoundExchange’s testifying expert witnesses and any document constituting or reflecting the substance of any lecture, conference, presentation, seminar or other event that was participated in, moderated, written, or co-authored by any of SoundExchange’s testifying expert witnesses that discusses or otherwise relates to any of the subjects discussed in his Report,

as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

93. Each document constituting a report, testimony (whether in deposition, trial or hearing) or opinion, with exhibits, submitted by any of SoundExchange's testifying expert witnesses in any judicial or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his Report, as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Audio Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Audio Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

94. Each document constituting or reflecting meetings, discussions or other communications between any of SoundExchange's testifying expert witnesses and record company personnel or record company representatives, including any meetings discussed or referenced in an expert's report.

95. Each document constituting or reflecting any communication between any of SoundExchange testifying expert witness and any SoundExchange fact witness or any non-lawyer member or employee of SoundExchange pertaining to the subject matter of this proceeding or the subject matter of the expert's or any assertion therein.

**Document Requests Directly Related to the  
Written Witness Testimony of Daniel Rubinfeld**

96. All agreements between each Record Company and any Digital Service, including any agreement listed in Rubinfeld Testimony ¶ 16 and Appendix 2, including both current agreements and prior agreements covering all or part of the 2006-2015 period.

97. For each agreement responsive to Request 96, for each reporting period specified by the agreement (e.g., monthly, quarterly or annual), documents sufficient to show:

- a. total payments collected from the music streaming service;
- b. 

102. Any data cited as the source of any Exhibit in the Rubinfeld Testimony or reviewed in connection with the development of any such Exhibit, including the "Internal SoundExchange data" cited as the source for Exhibit 11 of the Rubinfeld Testimony, and the "Performance data provided by major labels" cited as the source of Exhibit 16a of the Rubinfeld Testimony.

103. All documents, studies, analyses, presentations, and communications comparing, evaluating, or differentiating audio streaming services and video streaming services.

104. For each category of Digital Service described in Rubinfeld Testimony ¶ 16 and Appendix 2, all documents concerning the market characteristics for each such category, including, without limitation:

- a. retail prices to end user customers;
- b. consumer demand;
- c. demand or price elasticities;
- d. consumer usage;
- e. customer turn-over/churn rates; and
- f. the extent to which services in the category promote and/or substitute for other forms of consumer music consumption.

105. Each document reviewed or considered by Dr. Rubinfeld concerning his proposal for rates for Noncommercial Broadcasters or other Noncommercial Digital Services, Rubinfeld Test. ¶¶ 33, 246, including each document and all data related to his conclusion that "for most if not all non-commercial webcasters [the] \$500 minimum [fee] likely will be the only leg of the formula that applies" and that "the \$500 minimum fee has not discouraged entry into the music streaming industry."

106. All documents provided to Dr. Rubinfeld by Sound Exchange or the labels, including any documents or notes related to the in-person meetings that Dr. Rubinfeld had with "the three major record labels, Sony, Warner, and Universal, as well as one of the larger independent music labels," as described in ¶ 8 of his testimony.

107. All documents, studies, analyses, surveys, presentations, memoranda or other communications demonstrating, supporting, refuting, or otherwise relating to the claim that physical sales of music and other sources of record label revenue are being "replaced" by streaming, Rubinfeld Testimony ¶¶ 46, 138, including, documents relating to or quantifying the effect (promotional or substitutional) of various types of streaming services on revenue from and audience/listenership for owned music purchases (including sales of downloads and CDs), live concerts, interactive music services (including both ad-supported and subscription-based services), terrestrial radio, satellite radio, and other forms of non-interactive webcasting, or any difference in such effect between simulcasts of radio broadcasts and custom webcasting.

108. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contentions in ¶ 48 of his testimony that "[t]here are no prohibitive barriers to entry into the music streaming industry," and that "entry barriers are especially low for online broadcasters."



109. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 49 of his testimony that "listeners can become 'locked' in to services such as Pandora after they have expressed their likes and dislikes for particular music genres or artists, resulting in highly customized stations or playlists," including any data on the extent to which users of music streaming services use these features.

110. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contentions in ¶¶ 21, 52-74, 91, 140, and 160-61 of his testimony that interactive and non-interactive services "compete" with each other and that there is "increasing convergence between" and "substitution among" interactive and non-interactive services.

111. All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 99 of his testimony that "some [webcasters] utilize business models that seek to generate substantial current revenues, while others may follow growth-oriented business models that forgo current revenues in the hope of growing market share while generating substantial network effects."

112. Data on U.S. music sales, by month, for the period between January 2009 and present, including artist, album, song, type of sale (download vs. CD or other media), retail outlet, and location, at the most granular geographic level available (e.g. ZIP code).

113. Data on U.S. listeners to interactive music services, by service and service type (ad-supported, trial, or subscription), including total listeners, total active listeners, total performances, and average performances per month, provided at the most granular level of demographic detail (age, income, and geographic location) available.

114. Each document reviewed or considered by Dr. Rubinfeld in connection with his testimony reflecting, referring to, or discussing: (i) any Record Company's strategy for licensing interactive and non-interactive streaming services, (ii) the effect on any Record Company's revenues or business of the Record Company's licenses with Digital Services; (iii) the effect of the statutory license rate on license fees that a record company is able to obtain in direct license negotiations with Digital Services; (iv) the elasticity of demand of Digital Services for licenses from Record Companies; (v) the effect of statutory streaming royalties on a record company's investment in developing sound recordings; or (vi) any Record Company's actual or projected revenues for 2013 through 2020.

115. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his determination of the minimum per-play fee and minimum revenue shares in his analysis of his "potential interactive benchmarks," including the discussion in ¶¶ 204-206 and Appendix 1a of the Rubinfeld Testimony.

116. Each document reviewed, relied upon, or created by or on behalf of Dr. Rubinfeld in connection with his adjustment "for the value of interactivity" to his potential interactive benchmark, including the discussion in ¶¶ 167-172 and 207-211, and Exs. 5 and 14 of the Rubinfeld Testimony.

**Document Requests Directly Related to the  
Written Witness Report of David Blackburn**

127. Each document constituting or reflecting any communication between Dr. Blackburn and any SoundExchange fact witness or any non-lawyer member or employee of SoundExchange pertaining to the subject matter of this proceeding or the subject matter of Dr. Blackburn's Report or any assertion therein.

128. Each document that Dr. Blackburn consulted, relied upon, cited, or reviewed in connection with his engagement by Munger, Tolles & Olsen LLP referenced in paragraph 1 of his Report or in connection with any of the assertions, tables, or figures in Dr. Blackburn's Report, including, but not limited to, each document that constitutes, records, or analyzes any data and/or document provided to Dr. Blackburn by SoundExchange, any record label, or any third party in connection with this proceeding. Where data were provided in a summary, chart, figure or compilation, provide each underlying document that was considered, consulted, or relied upon in preparing such summary, chart, figure or compilation.

129. For each study, analysis, or survey discussed or referenced in Dr. Blackburn's Report, including, but not limited to, the empirical analysis conducted by NERA (§§ 63-72), the "MIDiA Research survey" (§ 95), the MIDiA Research Music Model cited in figure 10 of Dr. Blackburn's Report, and any SNL Kagan, Edison Research, Pew Research, or other analyses or studies that Dr. Blackburn discusses or cites in his Report, documents sufficient to provide the information referenced in 37 C.F.R. § 351.10(e), including "the study plan, the principles and methods underlying the study, all relevant assumptions, all variables considered in the analysis, the techniques of data collection, the techniques of estimation and testing, [] the results of the study's actual estimates and tests presented in a format commonly accepted within the relevant field of expertise implicated by the study," "[t]he facts and judgments upon which conclusions are based," "any alternative courses of action considered," "[s]ummarized descriptions of input data, tabulations of input data[,] and the input data."

130. Each document related to Dr. Blackburn's assertions concerning the alleged "convergence" between non-interactive webcasters and interactive webcasters (§ 13), including, but not limited to, each document related to Dr. Blackburn's assertions that: "non-interactive services increasingly resemble interactive services and vice versa" (§ 16); "there is little difference between non-interactive streaming and interactive streaming" (§ 16); the competition between statutory webcasting and interactive music streaming "will become more and more important to content creators" (§ 45); there is "an increasing closeness of the user experience for statutory webcasters and non-statutory interactive services" (§ 46); "in the absence of statutory webcasting, then, it follows that these users would be more likely to sign up for subscription-based interactive competitors" (§ 96); and that "statutory webcasters compete directly with subscription services" (§§ 97-105).

131. Each document related to Dr. Blackburn's assertions that "[s]tatutory webcasting has been a vibrant, growing industry throughout the past several years and is expected to continue as such," and "has experienced sustained entry and growth throughout the prior license period" (§ 6), including, but not limited to, each document related to Dr. Blackburn's assertions that: "there is a robust and viable market in which competitors are able to earn sufficient

economic return” (§ 7); “the statutory webcasting industry is prospering” and “data on the entry and resiliency of webcasting services demonstrate that there has been steady and consistent growth, indicating profit opportunities continue to exist in the industry” (§ 17); “the increased demand from users would be expected to allow existing firms to earn more profits from their services” (§ 20); “the streaming industry has seen a steady increase in new entrants” and “investors continue to pour money into the webcasting industry” (§ 21); “survival rates are high in statutory webcasting” (§§ 25-28); “advertising revenues have risen and are expected to continue to rise” (§ 33); and the webcasting industry is “healthy and represents an expected profit center for the future” (§ 55). Please include in your response each study, analysis, report, research, or other document discussing, reflecting, quantifying, or otherwise relating to investments in any Digital Service, any market entries and exits of any Digital Service from 2007 to the present, and any business plans, analyses, or projections by a Digital Service, potential investor, or any other third-party analyzing, predicting, or otherwise related to historical and expected profits and market returns for any Digital Service from 2007 through 2020.

132. Each document related to Dr. Blackburn’s assertions that Pandora and other webcasters have “chosen, as many rational actors do, to forego short-run profitability in favor of user and market share growth” (§ 6) and “have an economic incentive to invest in market share” (at 41), that “consistent with economic theory and experience ... many companies defer profits in order to grow more rapidly” (§ 55), that “for music streaming services, in particular, the potential to earn greater online advertising rates for access to the large user base makes foregoing short-run profits in favor of longer-run profits from greater market share a rational economic strategy” (§ 68), and that “pricing below licensing costs can be a rational economic decision” (§§ 83-84). Please include in your response each document constituting, discussing, or relating to any decision by any Digital Service to forego profits in favor of market share growth and any business plans or projections of any Digital Service that Dr. Blackburn considered or reviewed.

133. Each document related to Dr. Blackburn’s assertions he finds “little support for the suggestion that statutory webcasting serves a primarily promotional role to other record label revenue sources,” that the “evidence suggests, at both a macro and micro level, that statutory webcasting does not tend to increase digital downloads,” and that “the record is clear that statutory webcasters, such as Pandora, serve to cannibalize industry revenues earned through directly licensed interactive streaming services” (§ 6), including each document related to Dr. Blackburn’s assertions that: “webcasting does not drive sales” (§§ 90-96); and the existence of a “referral link” is “neither necessary nor sufficient evidence of a promotional relationship between statutory webcasting plays and sales” (§ 91). Please include in your response each document that Dr. Blackburn reviewed or otherwise considered that reflects, discusses, or otherwise relates to the types of activities that record labels engage in to obtain play of sound recordings on terrestrial radio or any Digital Service and the amounts spent in connection with each such activity as well as any studies, analyses, or surveys that discuss the extent to which listening to sound recordings on terrestrial radio, or any noninteractive or interactive Digital Services increases or decreases the time spent listening to sound recordings through other means or increases or decreases digital or physical sales of sound recordings.

134. Each document related to Dr. Blackburn’s assertions that webcasting services in general and Pandora in particular experience “network effects” and “lock-in” (§ 24, 59-62), including, but not limited to, each document related to Dr. Blackburn’s assertions that: the

“webcaster’s large audience and ability to share stations among friends and users makes it more attractive to other users” (§ 24); and “the fact that many users have invested in rating music on that service (an activity that cannot be easily transferred to a competing service without, in all likelihood, manually re-expressing preferences) means that users, once they have ‘taught’ the service what they like to hear, would face high switching costs from moving to a competing service” (§ 24).

135. Each document related to Dr. Blackburn’s assertions related to Pandora, including, but not limited to, each document related to the assertions that Pandora plays a “special role in statutory webcasting” (§ 51-54), that “Pandora’s content costs as a percentage of revenue are only as high as they are due to, to some extent, its own decisions” (§ 88), that “Pandora has chosen to maximize market share over profits in the short-run, minimizing ads to bolster the user experience” (§ 88), and that “Pandora could solve its financial problems by simply selling more ads” (§ 88). Please include in your response each document reviewed or considered by Dr. Blackburn that reflects, reports, or otherwise discusses Pandora’s advertising rates and its advertising sell-out rates and any communications with or statements by advertisers concerning advertisers’ willingness to place advertisements on Pandora.

136. Each document related to Dr. Blackburn’s assertion that there has been “a paradigm shift in the way listeners consumed music” (§ 42), including, but not limited to, each document related to Dr. Blackburn’s assertions that: “record labels have also placed their stock in streaming as the future of music distribution” (§ 41) and “are now monetizing the consumption of music in ways that were not possible a few years ago” (§ 35); beginning in 2013, “consumers in large numbers began a switch from digital downloads to streaming services” (§ 43); and “music is shifting into the new phase of consumption, which is expected to reflect the continued rise of music streaming services and decline of physical and digital downloads” (§ 44). Please include in your response any strategic or business plans, projections, forecasts, or similar documents prepared by or on behalf of any Record Label related to all or any part of the time period from 2007-2020.

137. Each document relating to Dr. Blackburn’s assertions in paragraphs 8-10 and 101 of his Report that the “differences among music streaming services” – including, but not limited to, “entirely programmed radio,” “customized non-interactive webcasting,” and interactive services – “are important” and that terrestrial radio listeners have a greater incentive to “‘upgrade’ to the additional offerings provided by subscription services.” Please include in your response each document that discusses, analyzes, references, or otherwise relates to (1) any differences among such services, including terrestrial radio, (2) the extent to which those differences “help shape not only the licensing rates that [Digital Services] pay, but also the competition among them” (§ 10), and (3) any differences among such types of services regarding the extent to which they promote or substitute for purchases of sound recordings or listening to sound recordings through alternative means.

138. Each document related to Dr. Blackburn’s assertions in paragraph 105 of his Report that “[t]he attractiveness of free webcasting over those subscription services will also increase over time,” the adoption of subscription services by new users instead of free (statutory) alternatives will be lower than currently),” and “the rate at which listeners convert from free (statutory) to subscription services will fall below its already low level.”

station simulcaster, or Digital Service; (ii) documents related to artist visits to any radio station, radio station simulcaster, or Digital Service and documents sufficient to quantify the total number of such visits; (iii) each agreement with any third party (including any independent promoter) concerning the promotion of UMG's recordings to any radio station, radio station simulcaster, or Digital Service, all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other consideration paid to such third parties under each agreement; (iv) each agreement with any radio station, radio station simulcaster, or Digital Service (including the "deals with interactive services" mentioned in paragraph 27 of Mr. Harleston's testimony and any similar or related agreements), all documents related to the negotiation of those agreements, and documents sufficient to show the amount of money or any other thing of value given to any radio station, radio station simulcaster, or Digital Service, or their listeners or customers pursuant to those agreements; (v) all documents reflecting communications related to efforts to obtain airplay for one or more recordings released by UMG for play on any radio station, radio station simulcaster, or Digital Service, including, but not limited to, letters, emails, internal memos, and notes; and (vi) each document concerning any advertisements directed in whole or in part to any radio station, radio station simulcaster, or Digital Service (or programmers thereof), including tip sheets.

October 13, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2014, I caused a copy of the foregoing Public version of the First Set of Requests for Production of Documents to SoundExchange, Inc. and GEO Music Group from Licensee Participants to be served by email to the participants listed below:

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*GEO Music Group*

*Counsel for SoundExchange, Inc.*

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Sabrina A. Perelman  
Sabrina A. Perelman



# EXHIBIT B

Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
Washington, D.C.

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In re:	)	
	)	
DETERMINATION OF ROYALTY	)	Docket No. 14-CRB-0001-WR (2016-2020)
RATES AND TERMS FOR EPHEMERAL	)	
RECORDING AND DIGITAL	)	
PERFORMANCE OF SOUND	)	
RECORDINGS ( <i>WEB IV</i> )	)	

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**SOUNDEXCHANGE, INC.'S RESPONSES AND OBJECTIONS TO LICENSEE  
PARTICIPANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

**GENERAL OBJECTIONS**

1. SoundExchange, Inc. ("SoundExchange") objects to the Requests, including all Definitions and Instructions, to the extent they purport to impose upon SoundExchange requirements that exceed or are inconsistent with 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding, including applicable prior precedent.

2. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not "directly related" to SoundExchange's written direct statement. See 17 U.S.C. § 803(b)(6)(C)(v), 37 C.F.R. § 351.5(b).

3. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they are ambiguous, duplicative, and/or vague.

4. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they are oppressive, harassing, overbroad and/or unduly burdensome.

5. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they are not limited to time periods reasonably related to the matters at issue in this proceeding. Unless otherwise indicated in response to a particular Request, SoundExchange will provide responsive documents for the time period beginning January 1, 2011 through those documents most recently available at the close of discovery.

6. SoundExchange object to the Requests, including all Definitions and Instructions, to the extent they are not limited in geographic scope to those matters at issue in this proceeding. Unless otherwise indicated in response to a particular Request, SoundExchange will produce responsive information as related to the United States or worldwide if it includes the United States.

7. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they call for information that is already in the possession of the parties propounding these Requests, information that is publicly available and readily accessible, or information already produced in this proceeding. Such Requests are overbroad, unduly burdensome, oppressive, and harassing, and would needlessly increase the cost of this proceeding.

8. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek information or documents protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product doctrine. SoundExchange will not produce any document so protected. Any inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client privilege, the attorney work-product doctrine, and any other applicable privilege or doctrine.

9. A statement herein that SoundExchange will produce documents responsive to a Request does not indicate and should not be construed to mean that SoundExchange agrees, admits or otherwise acknowledges the characterization of fact or law or the factual expressions or assumptions contained in the Request, that the scope of the Request is consistent with the discovery permitted in this proceeding, that the documents are relevant or admissible.

10. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek to impose obligations on any member of SoundExchange that is not a participant in this proceeding and/or has not provided a witness in this proceeding, on the bases that such Requests are not “directly related” to SoundExchange’s written direct statement and are oppressive, harassing, overbroad and unduly burdensome.

11. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek documents that are not in the possession, custody, or control of SoundExchange, including documents from other parties or members of SoundExchange.

12. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent any particular Request seeks documents and responses from multiple companies, entities or people. Moreover, SoundExchange objects to the extent the Requests are compound and include discrete sub-parts. Such Requests constitute multiple document requests under the parties’ Agreement regarding the Discovery Schedule as submitted to the Judges on July 29, 2014 (“Discovery Schedule”).

13. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they refer to specific witness testimony yet seek documents from other witnesses or entities that do not address the same subject matter, as not “directly related” to SoundExchange’s written direct statement, overbroad, harassing and unduly burdensome.

14. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek "all" documents of a certain nature, as vague, ambiguous, overbroad and unduly burdensome.

15. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they mischaracterize or misquote testimony, or quote or refer to testimony out of context.

16. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek documents in relation to general testimony that was based on a witness's knowledge, experience, and/or generally acknowledged facts.

17. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek to require the creation of documents or the compilation of documents in a manner different from the manner in which they are maintained in the ordinary course of business.

18. SoundExchange objects to the Requests, including all Definitions and Instructions, to the extent they seek documents which the parties have, by written agreement, agreed not to seek from or produce to one another.

19. By agreeing to search for or produce documents responsive to any particular Request, SoundExchange does not represent that such documents exist or that they are in the possession, custody or control of SoundExchange, an entity submitting testimony or a witness, or that all documents responsive to the Request fall within the permissible scope of discovery or will be produced.

20. SoundExchange reserves any and all objections to the use or admissibility in this or any proceeding of any information, material, documents identified, produced or disclosed in response to the Requests.

21. The responses and objections contained herein are made to the best of SoundExchange's present knowledge, belief and information, and are based on a reasonable and diligent search. SoundExchange reserves the right to amend or supplement its objections and responses based on, among other reasons, its continuing investigation of this matter, further review, or later acquisition of responsive information.

### **OBJECTIONS TO DEFINITIONS**

SoundExchange objects as follows to the Definitions:

22. SoundExchange objects to the definition of "Digital Service" in Definition No. 1 as overbroad because it purports to define the relevant universe of services without limitation to issues that are relevant to this proceeding and in such a manner that would defeat the statutory provisions defining discoverable material. To the extent the Requests purport to impose an obligation to produce documents related to all of the types of services included in the overbroad definition, SoundExchange objects to the definition as purporting to require the production of documents not "directly related" to SoundExchange's written direct statement, and as overbroad, unduly burdensome, oppressive, harassing and not reasonably limited to subject matters at issue in this proceeding.

23. SoundExchange objects to the definition of "Record Company" in Definition No. 6 as overbroad, unduly burdensome, oppressive, harassing and not beyond the scope of permissible discovery in this proceeding, to the extent it seeks to impose obligations on the thousands of SoundExchange record company members that are not participants in this

proceeding and have not provided a witness in this proceeding, and to the extent it defines a record company to include all companies related to it. Subsidiary and/or affiliate recording companies and record labels within Sony Music Entertainment, Universal Music Group, and Warner Music Group are distinct entities and the documents of these distinct entities are not within the custody and/or control of SoundExchange and/or its witnesses.

24. SoundExchange objects to the definition of “Recording Industry Association of America” and “RIAA” in Definition No. 7 because RIAA is not a participant in this proceeding and has not provided a witness in this proceeding. SoundExchange further objects to the definition as overbroad to the extent it refers to affiliated companies, which could be interpreted to refer to hundreds of record companies, and to the extent it purports to include anyone acting on RIAA’s behalf.

25. SoundExchange objects to the definition of “Sony” in Definition No. 8 as overbroad to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including numerous record labels and anyone acting on Sony’s behalf.

26. SoundExchange objects to the definition of “SoundExchange,” “you” and “your” in Definition No. 10 as overbroad, oppressive, harassing, and unduly burdensome to the extent that its reference to “affiliated companies” seeks to impose obligations on the thousands of record companies to whom SoundExchange distributes royalty payments. SoundExchange also objects to the definition as overbroad and vague to the extent it purports to impose obligations on anyone acting on SoundExchange’s behalf.

27. SoundExchange objects to the definition of “SoundExchange Witness” in Definition No. 11 as overbroad and unduly burdensome to the extent it seeks documents from

witnesses who “will supply testimony” in this proceeding, but who have not yet been disclosed or identified as direct case witnesses.

28. SoundExchange objects to the definition of “Warner” and “WMG” in Definition No. 12 as overbroad and unduly burdensome to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including numerous record labels that did not provide witnesses and anyone acting on WMG’s behalf.

29. SoundExchange objects to the definition of “UMG” in Definition No. 13 as overbroad and unduly burdensome to the extent it purports to impose an obligation to collect documents from an unreasonably wide array of people and entities, including numerous record labels that did not provide witnesses and anyone acting on UMG’s behalf.

30. SoundExchange objects to the definitions of “and” and “or”, and “any” and “all” in Definition No. 14 to the extent they are overbroad, vague, ambiguous and unduly burdensome. SoundExchange further objects to the definition of “including” to the extent it purports to impose obligations beyond the scope of the applicable statute and regulations governing discovery in this proceeding, including 17 U.S.C. § 803(b), 37 C.F.R. § 351.5, and any other applicable rule or order governing this proceeding.

#### OBJECTIONS TO INSTRUCTIONS

31. SoundExchange objects to the Instructions to the extent they seek to impose obligations that are inconsistent with or not supported by the governing statute, regulations, orders, or the Discovery Schedule.

32. SoundExchange objects to Instruction No. 1 to the extent it is inconsistent with the parties’ Discovery Schedule, especially with respect to so-called “follow-up requests,” which



should count towards the limit of 200 requests. SoundExchange further objects to the reference to an order of the Judges without a date or other identification of the Order referenced.

33. SoundExchange objects to Instruction No. 3 as not directly related to SoundExchange's written direct case, overbroad, unduly burdensome, harassing and oppressive to the extent it seeks documents from RIAA, which is not a participant in this proceeding and has not provided a witness in this proceeding. SoundExchange further objects to the instruction as overbroad, unduly burdensome, harassing and oppressive to the extent it seeks documents from the "attorneys, agents, directors, officers, employees, representatives" or anyone "or entit[y] directly or indirectly employed by or connected with SoundExchange, RIAA or such Record Company," without limitation to the extent it is overbroad, unduly burdensome and exceedingly vague and purports to impose an obligation to collect documents from an unreasonably wide array of people and entities. SoundExchange further objects to the extent Instruction No. 3 seeks information protected from discovery under any statute, regulation, agreement, protective order or privilege, including, but not limited to, the attorney-client privilege and work-product doctrine. As a general matter, where applicable and except as otherwise indicated in response to a specific request, SoundExchange will conduct a reasonable search for and produce non-privileged documents from SoundExchange and the witnesses who submitted written direct testimony on behalf of SoundExchange. To the extent SoundExchange searches for responsive documents from Warner, Sony or UMG, it agrees to do so at the corporate level where such documents are most likely to be found, and not at the level of individual labels within each company except where indicated below.

34. SoundExchange objects to Instruction No. 5's request for a privilege log. The governing statute, regulations and Discovery Schedule do not provide for the exchange of

privilege logs. Creation of a privilege log would be unreasonable and unduly burdensome within the very short discovery period provided in this proceeding.

35. SoundExchange objects to Instruction No. 7 requiring SoundExchange to the extent it purports to require SoundExchange to guess as to the meaning intended by impossibly ambiguous language and respond to an objectionable request.

36. SoundExchange objects to Instruction No. 9 as overbroad and unduly burdensome to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. Except as otherwise indicated in response to a specific request, SoundExchange will search for and produce documents for the time period January 1, 2011 to those most recently available at the close of discovery.

#### **RESPONSES TO REQUESTS FOR DOCUMENTS**

##### **Document Requests Related to SoundExchange's Rate Proposal for Noncommercial Webcasters**

##### **REQUEST FOR PRODUCTION NO. 1:**

Each document reflecting the consideration given, if any, by SoundExchange (including any officers, directors, Board members, or employees of SoundExchange) or any SoundExchange witness (including SoundExchange's experts), in connection with the development of SoundExchange's proposed rates and terms as are applicable to NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete noncommercial broadcaster group regarding whether and/or how NPR/Public Radio, broadcasters affiliated with a college or university, noncommercial religious broadcasters, or any other discrete Noncommercial Broadcaster group were (or should be) considered or treated in any fashion different or separate from other Noncommercial Webcasters covered by SoundExchange's proposed rates and terms for Noncommercial Webcasters (as set forth in Section II.B of the Proposed Rates and Terms of SoundExchange, Inc., filed on October 7, 2014).

##### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery

the effect of statutorily licensed services on the conversion of on-demand services' users to subscription tiers or otherwise to generate higher ARPU, (c) the effect of the statutory streaming royalties on Sony's investment in developing sound recordings, and (d) the contentions on page 17 that (1) "It is difficult for direct licensees to convince users that the differences [between the overall consumer offerings of direct licensees' services and statutory services] are worth paying for," (2) "Users perceive costs to switching" from free digital services to subscription services, and (3) "Direct licensees find themselves competing for listeners with closely comparable services that pay substantially reduced rates and that make little or no effort to convert free listeners to paying subscribers."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive, and harassing to the extent is compound and confusing. SoundExchange interprets this request to ask for documents that refer or relate to competition between statutory and directly licensed services. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents that refer to competition between statutory and directly licensed services kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

**REQUEST FOR PRODUCTION NO. 28:**

All documents, including without limitation any studies, analyses, surveys, presentations, or memoranda, that refer or relate to the existence or nonexistence of a substitutional or promotional effect by any Digital Service (including any "Streaming Services" and "directly licensed services" as Mr. Kooker uses those terms on pages 21-22 of his written direct testimony) or terrestrial radio on other sources of record company revenue such as sales of CDs and permanent downloads or higher ARPU subscription offerings.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. Specifically, terrestrial radio is not a “market[] that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .”, Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as entirely duplicative of Request No. 14 and as overbroad, unduly burdensome, oppressive, and harassing. SoundExchange further objects to the defined term Digital Services as overbroad and creating undue burden because it sweeps far too widely and potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Kooker’s testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents related to the substitutional or promotional effect of streaming music services kept in the ordinary course of business to the extent directly related to SoundExchange’s written direct testimony.

**REQUEST FOR PRODUCTION NO. 29:**

For each fiscal year from 2009 to the fiscal year ending March 31, 2014, and for each subsequent fiscal quarter, documents sufficient to show the amounts Sony Music (or Sony’s Subsidiary Labels) spent to promote artists or sound recordings to radio stations and Digital Services, including without limitation, all costs associated with: manufacturing and shipping promotional sound recordings; independent or other outside promotion; in-house promotional staff; advertising directed to radio stations or Digital Services or their programmers; providing artists for appearances at radio stations and Digital Services; promotional concerts and tours; giveaways and other incentives provided to radio stations or Digital Services other than promotional sound recordings; all overhead associated with or allocable to such promotion; and any other promotional costs not included in the above.

attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents related to the shift from an ownership model to an access model in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

**REQUEST FOR PRODUCTION NO. 45:**

All documents related to the contention on page 9 of the Harrison testimony that "we seek to ensure that services to which Universal grants the right to use sound recordings will generate revenue and not just divert revenue from other forms of exploitation, including higher ARPU subscription streaming services," including all studies, analyses, memoranda or documents otherwise concerning similarities and/or differences between types of streaming services, and the degree to which they do or do not substitute for one another.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable

search for additional documents in the places where such documents would most likely be found and agrees to produce those documents related to substitution between streaming services kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

**REQUEST FOR PRODUCTION NO. 46:**

Documents from January 1, 2009, to the present concerning Universal's "approach to the market for the distribution of recorded music" (Harrison testimony page 4), including but not limited to strategic plans, presentations, memos, analyses, etc., whether for Universal, any of its labels, or industry-wide.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as hopelessly overbroad, unduly burdensome, oppressive and harassing as Universal's "approach to the market for the distribution of recorded music" could be interpreted to include every document created by Universal. SoundExchange further objects to this request as ambiguous and vague. SoundExchange interprets this request to be seeking strategy documents as related to the digital distribution of sound recordings. SoundExchange objects to this request to the extent it purports to require an unreasonable and unduly burdensome search for documents from every label within a larger record company. Such documents are not kept at a central location in the normal course of business. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding, including time periods that pre-date the current statutory rate period. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business sufficient to show Universal's approach to the digital distributions of sound recordings to the extent directly related to SoundExchange's written direct testimony.

**REQUEST FOR PRODUCTION NO. 47:**

All documents related to the contention on page 9 of the Harrison testimony that "Pandora is streaming music to users who might otherwise pay for a subscription or use a higher

ARPU streaming service,” including all studies, analyses, memoranda or documents otherwise concerning whether and how Pandora or other webcasters do or do not substitute for paying subscriptions or use of services with higher ARPU.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison’s testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. After conducting a reasonable search and inquiry into where documents are most likely to be found, SoundExchange has not located any additional responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 48:**

All documents related to the contention on page 10 of the Harrison testimony that “on-demand services like Spotify compete directly with statutory webcasters like Pandora,” including all studies, analyses, memoranda or documents otherwise concerning such competition, and any competition between other statutory services and on-demand services like Spotify.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison’s testimony. SoundExchange objects to this request to the extent it

seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents related to the competition between statutory and on-demand services kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony.

**REQUEST FOR PRODUCTION NO. 49:**

All studies, analyses, surveys, presentations, memoranda or other documents related to the following contentions of Mr. Harrison as to the promotional or substitutional impact of Digital Services:

- a. "Over the past few years, we have grown to understand that neither on-demand nor customized streaming services promote sales of recorded music" (p. 5)
- b. "If a user has 'customized' her or his preferences through a streaming service, the user knows they have a good chance of hearing songs they like, or others like them, and thus see a diminished need to own a particular recording"
- c. "these services are drawing consumers and revenue away from the sale of permanent downloads and CDs"
- d. "on-demand and customized streaming services do not promote sales of downloads"
- e. The requested documents include, without limitation, all documents concerning the potential or actual substitution of any Digital Service for any other Digital Service and/or sales of compact discs, vinyl records or digital downloads.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as duplicative of prior document requests, compound, and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to the defined term Digital Services as overbroad and creating undue burden, because it sweeps far too widely and



potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange will conduct a reasonable search for additional documents in the places where such documents would most likely be found and agrees to produce those documents kept in the ordinary course of business to the extent directly related to the promotional or substitutional impact of interactive and non-interactive services on other sources of revenue.

**REQUEST FOR PRODUCTION NO. 50:**

All documents, including without limitation any studies, analyses, surveys, presentations, memoranda or other documents, related to the statement in paragraph 13 of Mr. Harrison's testimony that "we have found that streaming services cannot generate sufficient ARPU through advertising alone."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as both duplicative and overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Harrison's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist. SoundExchange objects to this request to the extent it seeks internal documents discussing the value of the consideration. The consideration received can be evaluated by looking to the final agreement which represents the consideration to which a willing buyer and seller would agree. SoundExchange has already produced numerous agreements with streaming music services that are evidence of the value of these provisions. Further, SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. For the aforementioned reasons, SoundExchange will not produce additional documents pursuant to this request.

SoundExchange's witnesses' written direct testimony. After conducting a reasonable search and inquiry into where documents are most likely to be found, SoundExchange has not located any additional responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 63:**

All studies, analyses, surveys, memoranda or other documents related to the similarities, differences, and degree of competition or substitution between webcasting and on-demand streaming services (as Mr. Wheeler uses those terms), including but not limited to documents relating to Mr. Wheeler's contentions that:

- a. webcasting services "are now attempting to offer enough of a complete music experience . . . to draw consumers away from the higher-revenue-per-consumption services, such as on-demand subscription services" (paragraph 31)
- b. "[t]here is a real danger that webcasting services provide enough functionality such that most consumers will not need or will choose not to look to on-demand subscription services" (paragraph 35)
- c. "the distinction between [webcasting services and on-demand subscription services] is less and less a meaningful difference for consumers" (paragraph 36)
- d. Mr. Wheeler "would expect that a negotiating framework for webcasting would largely approximate the on-demand service framework" (paragraph 36)
- e. "statutory webcasting does offer slightly less functionality (i.e., no on-demand) but there is not really much other difference" (paragraph 38)
- f. "webcasting and on-demand services compete for consumption" (paragraph 40)

**RESPONSE TO REQUEST FOR PRODUCTION NO. 63:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Wheeler's testimony. SoundExchange objects to this request to the extent it

seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. After conducting a reasonable search and inquiry into where documents are most likely to be found, SoundExchange has not located any additional responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 64:**

All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to the potential or actual substitution of any Digital Service for any other Digital Service, or the impact of any Digital Service usage on sales of sound recordings in physical or digital format, including but not limited to document related to Mr. Wheeler's statement in paragraph 42 of his Testimony that "streaming music on one service, such as a webcaster, will not induce a consumer to buy a premium subscription on another service, such as an on-demand service. Indeed, it is the incentive of the webcaster to do the exact opposite. . . ."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 64:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive, and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent that it mischaracterizes Mr. Wheeler's testimony. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business and that would require the creation of documents which do not already exist.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. After conducting a reasonable search and inquiry into where documents are most likely to be found, SoundExchange has not located any additional responsive, non-privileged documents.

inquiry into where documents are most likely to be found, SoundExchange understands that there is no summary document sufficient to show adjusted distribution amounts by payee.

**Document Requests Directly Related to the Written Direct Testimony of SoundExchange Expert Witnesses (Rubinfeld, Lys, Blackburn, McFadden)**

**REQUEST FOR PRODUCTION NO. 92:**

All published or unpublished scholarly articles or drafts, books or chapters of books, papers under review, working papers, course materials or presentations written in whole or in part by any of SoundExchange's testifying expert witnesses and any document constituting or reflecting the substance of any lecture, conference, presentation, seminar or other event that was participated in, moderated, written, or co-authored by any of SoundExchange's testifying expert witnesses that discusses or otherwise relates to any of the subjects discussed in his Report, as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 92:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. Specifically, terrestrial radio is not a "market[]" that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .", Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing as it seeks documents related to a massive array of subjects and that are readily available to Licensees and disclosed on SoundExchange's expert witnesses' CVs. SoundExchange objects to this request as compound because it seeks documents collected from every SoundExchange expert witness. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows:

SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce additional responsive, non-privileged documents identified by its experts as directly related to their written direct testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 93:**

Each document constituting a report, testimony (whether in deposition, trial or hearing) or opinion, with exhibits, submitted by any of SoundExchange's testifying expert witnesses in any judicial or regulatory proceeding that discusses or otherwise relates to any of the subjects discussed in his Report, as well as any relating to terrestrial radio, any Digital Service, satellite radio, difference among types of Digital Audio Services, alleged convergence between noninteractive and interactive services, the promotional or substitutional effect of Digital Services or terrestrial radio, the efforts of record companies to obtain play on any Digital Service or terrestrial radio, the sound recording digital performance right, the role of technology improvements in the alleged growth of Digital Audio Services, benchmarking analysis of any type, definition of a relevant market, reasonable interchangeability of products, cross-elasticity of demand, and the potential convergence of two products or markets into a single relevant market.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 93:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. Specifically, terrestrial radio is not a "market[]" that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .", Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing as it seeks documents related to a massive array of subjects and, the public versions of which, are readily available to Licensees and disclosed on SoundExchange's expert witnesses' CVs. SoundExchange objects to this request as compound because it seeks documents collected from every SoundExchange expert witness. SoundExchange further objects to the extent this request seeks documents the disclosure of which is protected or prohibited by law, regulation, protective order or non-disclosure agreement. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce

additional responsive, non-privileged documents identified by its experts as directly related to their written direct testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 94:**

Each document constituting or reflecting meetings, discussions or other communications between any of SoundExchange's testifying expert witnesses and record company personnel or record company representatives, including any meetings discussed or referenced in an expert's report.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 94:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request as compound because it seeks documents collected from every SoundExchange expert witness. SoundExchange objects to this request to the extent it seeks documents not maintained in the ordinary course of business.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. After conducting a reasonable search and inquiry into where documents are most likely to be found, SoundExchange has not located any additional responsive, non-privileged documents.

**REQUEST FOR PRODUCTION NO. 95:**

Each document constituting or reflecting any communication between any of SoundExchange testifying expert witness and any SoundExchange fact witness or any non-lawyer member or employee of SoundExchange pertaining to the subject matter of this proceeding or the subject matter of the expert's or any assertion therein.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 95:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this

request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 103:**

All documents, studies, analyses, presentations, and communications comparing, evaluating, or differentiating audio streaming services and video streaming services.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 103:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 104:**

For each category of Digital Service described in Rubinfeld Testimony ¶ 16 and Appendix 2, all documents concerning the market characteristics for each such category, including, without limitation:

- a. retail prices to end user customers;
- b. consumer demand;

- c. demand or price elasticities;
- d. consumer usage;
- e. customer turn-over/churn rates; and
- f. the extent to which services in the category promote and/or substitute for other forms of consumer music consumption.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 104:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. As written, the request seeks documents related to numerous digital music services, including documents that no witness or party has considered in connection with this proceeding, without any reasonable limitation to the issues in this proceeding. SoundExchange objects to the defined term Digital Services as overbroad and creating undue burden, because it sweeps far too widely and potentially implicates thousands of music services, many of which are not relevant as they involve rights not comparable to the rights licensed by §§ 114 and 112 at issue in this proceeding. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding, including time periods that pre-date the current statutory rate period. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 105:**

Each document reviewed or considered by Dr. Rubinfeld concerning his proposal for rates for Noncommercial Broadcasters or other Noncommercial Digital Services, Rubinfeld Test. ¶¶ 33, 246, including each document and all data related to his conclusion that “for most if not all non-commercial webcasters [the] \$500 minimum [fee] likely will be the only leg of the formula that applies” and that “the \$500 minimum fee has not discouraged entry into the music streaming industry.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 105:**



SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 106:**

All documents provided to Dr. Rubinfeld by SoundExchange or the labels, including any documents or notes related to the in-person meetings that Dr. Rubinfeld had with "the three major record labels, Sony, Warner, and Universal, as well as one of the larger independent music labels," as described in ¶ 8 of his testimony.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 106:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 107:**

All documents, studies, analyses, surveys, presentations, memoranda or other communications demonstrating, supporting, refuting, or otherwise relating to the claim that physical sales of music and other sources of record label revenue are being "replaced" by streaming, Rubinfeld Testimony ¶¶ 46, 138, including, documents relating to or quantifying the

effect (promotional or substitutional) of various types of streaming services on revenue from and audience/listenership for owned music purchases (including sales of downloads and CDs), live concerts, interactive music services (including both ad-supported and subscription-based services), terrestrial radio, satellite radio, and other forms of non-interactive webcasting, or any difference in such effect between simulcasts of radio broadcasts and custom webcasting.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 107:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 108:**

All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld’s contentions in ¶ 48 of his testimony that “[t]here are no prohibitive barriers to entry into the music streaming industry,” and that “entry barriers are especially low for online broadcasters.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 108:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding.

SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 109:**

All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contention in ¶ 49 of his testimony that "listeners can become 'locked' in to services such as Pandora after they have expressed their likes and dislikes for particular music genres or artists, resulting in highly customized stations or playlists," including any data on the extent to which users of music streaming services use these features.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 109:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 110:**

All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld's contentions in ¶¶

21, 52-74, 91, 140, and 160-61 of his testimony that interactive and non-interactive services “compete” with each other and that there is “increasing convergence between” and “substitution among” interactive and non-interactive services.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 110:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Rubinfeld in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Rubinfeld’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 111:**

All studies, analyses, surveys, presentations, memoranda or other documents demonstrating, supporting, refuting, or otherwise relating to Dr. Rubinfeld’s contention in ¶ 99 of his testimony that “some [webcasters] utilize business models that seek to generate substantial current revenues, while others may follow growth-oriented business models that forgo current revenues in the hope of growing market share while generating substantial network effects.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 111:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange objects to this request to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding.

responsive, non-privileged documents reviewed or referred to in Dr. Blackburn's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 129:**

For each study, analysis, or survey discussed or referenced in Dr. Blackburn's Report, including, but not limited to, the empirical analysis conducted by NERA (§§ 63-72), the "MIDiA Research survey" (§ 95), the MIDiA Research Music Model cited in figure 10 of Dr. Blackburn's Report, and any SNL Kagan, Edison Research, Pew Research, or other analyses or studies that Dr. Blackburn discusses or cites in his Report, documents sufficient to provide the information referenced in 37 C.F.R. § 351.10(e), including "the study plan, the principles and methods underlying the study, all relevant assumptions, all variables considered in the analysis, the techniques of data collection, the techniques of estimation and testing, [] the results of the study's actual estimates and tests presented in a format commonly accepted within the relevant field of expertise implicated by the study," "[t]he facts and judgments upon which conclusions are based," "any alternative courses of action considered," "[s]ummarized descriptions of input data, tabulations of input data[,] and the input data."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 129:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing as it seeks to force Dr. Blackburn to create documents related to market studies that are not his own. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Blackburn's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 130:**

Each document related to Dr. Blackburn's assertions concerning the alleged "convergence" between non-interactive webcasters and interactive webcasters (§ 13), including, but not limited to, each document related to Dr. Blackburn's assertions that: "non-interactive services increasingly resemble interactive services and vice versa" (§ 16); "there is little difference between non-interactive streaming and interactive streaming" (§ 16); the competition between statutory webcasting and interactive music streaming "will become more and more important to content creators" (§ 45); there is "an increasing closeness of the user experience for

statutory webcasters and non-statutory interactive services” (§ 46); “in the absence of statutory webcasting, then, it follows that these users would be more likely to sign up for subscription-based interactive competitors” (§ 96); and that “statutory webcasters compete directly with subscription services” (§§ 97-105).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 130:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Blackburn’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 131:**

Each document related to Dr. Blackburn’s assertions that “[s]tatutory webcasting has been a vibrant, growing industry throughout the past several years and is expected to continue as such,” and “has experienced sustained entry and growth throughout the prior license period” (§ 6), including, but not limited to, each document related to Dr. Blackburn’s assertions that: “there is a robust and viable market in which competitors are able to earn sufficient economic return” (§ 7); “the statutory webcasting industry is prospering” and “data on the entry and resiliency of webcasting services demonstrate that there has been steady and consistent growth, indicating profit opportunities continue to exist in the industry” (§ 17); “the increased demand from users would be expected to allow existing firms to earn more profits from their services” (§ 20); “the streaming industry has seen a steady increase in new entrants” and “investors continue to pour money into the webcasting industry” (§ 21); “survival rates are high in statutory webcasting” (§§ 25-28); “advertising revenues have risen and are expected to continue to rise” (§ 33); and the webcasting industry is “healthy and represents an expected profit center for the future” (§ 55). Please include in your response each study, analysis, report, research, or other document discussing, reflecting, quantifying, or otherwise relating to investments in any Digital Service, any market entries and exits of any Digital Service from 2007 to the present, and any business plans, analyses, or projections by a Digital Service, potential

request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Blackburn's testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 133:**

Each document related to Dr. Blackburn's assertions he finds "little support for the suggestion that statutory webcasting serves a primarily promotional role to other record label revenue sources," that the "evidence suggests, at both a macro and micro level, that statutory webcasting does not tend to increase digital downloads," and that "the record is clear that statutory webcasters, such as Pandora, serve to cannibalize industry revenues earned through directly licensed interactive streaming services" (§ 6), including each document related to Dr. Blackburn's assertions that: "webcasting does not drive sales" (§§ 90-96); and the existence of a "referral link" is "neither necessary nor sufficient evidence of a promotional relationship between statutory webcasting plays and sales" (§ 91). Please include in your response each document that Dr. Blackburn reviewed or otherwise considered that reflects, discusses, or otherwise relates to the types of activities that record labels engage in to obtain play of sound recordings on terrestrial radio or any Digital Service and the amounts spent in connection with each such activity as well as any studies, analyses, or surveys that discuss the extent to which listening to sound recordings on terrestrial radio, or any noninteractive or interactive Digital Services increases or decreases the time spent listening to sound recordings through other means or increases or decreases digital or physical sales of sound recordings.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 133:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. Specifically, terrestrial radio is not a "market[] that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .", Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive

43); and “music is shifting into the new phase of consumption, which is expected to reflect the continued rise of music streaming services and decline of physical and digital downloads” (§ 44). Please include in your response any strategic or business plans, projections, forecasts, or similar documents prepared by or on behalf of any Record Label related to all or any part of the time period from 2007-2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 136:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Blackburn’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 137:**

Each document relating to Dr. Blackburn’s assertions in paragraphs 8-10 and 101 of his Report that the “differences among music streaming services” – including, but not limited to, “entirely programmed radio,” “customized non-interactive webcasting,” and interactive services – “are important” and that terrestrial radio listeners have a greater incentive to “‘upgrade’ to the additional offerings provided by subscription services.” Please include in your response each document that discusses, analyzes, references, or otherwise relates to (1) any differences among such services, including terrestrial radio, (2) the extent to which those differences “help shape not only the licensing rates that [Digital Services] pay, but also the competition among them” (§ 10), and (3) any differences among such types of services regarding the extent to which they promote or substitute for purchases of sound recordings or listening to sound recordings through alternative means.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 137:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. Specifically, terrestrial radio is



not a “market[] that [SoundExchange] identified in its submissions as relevant to determining webcasting rates and terms and that may have been considered by [SoundExchange] or its experts . . .”, Order Granting Services Joint Motion to Compel SoundExchange to Produce License Agreements and Other Documents Withheld on Confidentiality Grounds (October 30, 2014). SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange’s witnesses’ written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. Blackburn’s testimony to the extent not already produced.

**REQUEST FOR PRODUCTION NO. 138:**

Each document related to Dr. Blackburn’s assertions in paragraph 105 of his Report that “[t]he attractiveness of free webcasting over those subscription services will also increase over time,” the adoption of subscription services by new users instead of free (statutory) alternatives will be lower than currently,” and “the rate at which listeners convert from free (statutory) to subscription services will fall below its already low level.”

**RESPONSE TO REQUEST FOR PRODUCTION NO. 138:**

SoundExchange objects to this request to the extent it seeks documents not “directly related” to SoundExchange’s written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. Blackburn in its initial disclosures.

Without waiver of and subject to SoundExchange’s general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located

**RESPONSE TO REQUEST FOR PRODUCTION NO. 145:**

SoundExchange objects to this request to the extent it seeks documents not "directly related" to SoundExchange's written direct statement. SoundExchange further objects to this request to the extent it seeks information and documents protected from discovery by the attorney-client privilege and work-product doctrine. SoundExchange asserts all such privileges and protections and will not produce documents so protected. SoundExchange objects to this request as overbroad, unduly burdensome, oppressive and harassing. SoundExchange further objects to this request, to the extent it seeks documents which the parties have, by written agreement, agreed not to seek from or produce to one another. SoundExchange objects to this request to the extent that it is not limited to time periods reasonably related to the matters at issue in this proceeding. SoundExchange has already produced documents relied upon by Dr. McFadden in its initial disclosures.

Without waiver of and subject to SoundExchange's general and specific objections, SoundExchange agrees to produce responsive, non-privileged documents located after a reasonable and diligent search to the extent such documents exist as follows: SoundExchange already produced documents that were relied upon in preparing SoundExchange's witnesses' written direct testimony. SoundExchange agrees to produce those responsive, non-privileged documents reviewed or referred to in Dr. McFadden's testimony to the extent not already produced.

Respectfully submitted,

By: /s/ Anjan Choudhury  
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*Counsel for SoundExchange, Inc.*

November 7, 2014

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 7, 2014, I caused a copy of  
**(PUBLIC) SOUNDEXCHANGE, INC.'S RESPONSES AND OBJECTIONS TO  
LICENSEE PARTICIPANTS' FIRST SET OF REQUESTS FOR PRODUCTION  
OF DOUCMENTS**

to be served by EMAIL to the Participants as indicated below:

### *Participants*

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*/s/ Rose Leda Ehler*

Rose Leda Ehler

# EXHIBIT C

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November 11, 2014

*Via Electronic Mail*

Glenn D. Pomerantz  
Munger Tolles & Olson LLP  
355 South Grand Ave., 35th Floor  
Los Angeles, CA 90071

Re: SoundExchange's Deficiencies in Responses to Discovery Requests  
Docket No. 14-CRB-0001-WR (2016-2020) (*Web IV*)

Dear Glenn:

I am writing regarding SoundExchange's response to the webcasting services' First Set of Requests for Production of Documents and First Set of Interrogatories. SoundExchange's response included fewer than 6,000 documents comprising approximately 60,000 pages; this production shows custodial information for only 12 record label employees. The webcasting services, by comparison, have produced more than 27,000 documents comprising 138,140 pages, from more than 65 separate custodians. Based on our review thus far, and without limiting other deficiencies that we may raise as our review continues, it appears that SoundExchange's document production is deficient with respect to at least the categories set forth below, and that many of SoundExchange's objections are improper. Given the highly compressed schedule, we request a meet and confer by no later than end of day Wednesday, November 12, 2014, to discuss these concerns.

*Promotional Effect of Webcasting Services.* A number of SoundExchange's fact and expert witnesses claimed that webcasting services do not promote other sources of music revenues, such as song and album sales, but instead substitute for such sales.<sup>1</sup> Based on these factual assertions, among others, SoundExchange's witnesses have argued that the non-interactive webcasting services at issue in this proceeding are "converging" with on-demand

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<sup>1</sup> See Kooker at 18-21; Wheeler at 18-19; Rubinfeld ¶¶ 21, 138, 161; Blackburn ¶¶ 89-109.



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services,<sup>2</sup> and that the agreements for such on-demand services are therefore an appropriate benchmark for the non-interactive services at issue here.<sup>3</sup> The webcasting services asked a number of requests and interrogatories directly related to this testimony.<sup>4</sup> Among other things, these requests sought documents regarding studies of promotion and substitution, the financial and other resources that the labels devote to promotion, marketing and promotion plans for top-grossing artists, and other documentary support for the broad statements made in the testimony of SoundExchange's witnesses.

SoundExchange's response appears to contain virtually none of this requested information. For example, although we understand that Monte Lipman (UMG), Greg Thompson (UMG), Charlie Walk (UMG), Joel Klaiman (Columbia Records/Sony), Lee Leipsner (Columbia Records/Sony), Joe Riccitelli (RCA Records/Sony), Mike Easterlin (Warner), Andrea Ganis (Atlantic Records/Warner), Peter Gray (Warner), and Julie Greenwald (Warner) oversee promotion for the various record labels, SoundExchange has produced *zero* custodial documents total for these individuals. More generally, just a tiny number of documents in SoundExchange's production appear responsive to the requests involving this category. SoundExchange's objections (at 22) state that it "will conduct a reasonable search for additional documents where such documents would most likely be found at the corporate level of the three major record companies and agrees to produce those documents related to the substitutional or promotional effect of streaming music services in the places kept in the ordinary course of business to the extent directly related to SoundExchange's written direct testimony." At a minimum, and without prejudice to other objections we have with SoundExchange's position that it will search for documents only at the "corporate level," we expect SoundExchange to perform searches of the individuals listed above and the record labels' promotions departments for documents responsive to the webcasting services' requests. Moreover, we expect this search to include the promotional effects of terrestrial radio, which is inextricably intertwined with the radio simulcasting services at issue in this proceeding.

*Record Label Costs and Revenues.* SoundExchange's fact and expert witness have also put the record labels' costs and revenues squarely at issue. For example, SoundExchange's witnesses from the record labels have argued that any rates from webcasting must compensate them for their "large capital investment," and have provided high-level totals of these expenditures.<sup>5</sup> These witnesses also have claimed that their revenues are declining due to

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<sup>2</sup> See Kooker 15-18; Rubinfeld ¶¶ 12, 21, 52-74, 140-41, 145, 160-61; Blackburn ¶¶ 13, 16, 45-46, 96, 97-105.

<sup>3</sup> See Harrison ¶¶ 17-21; Rubinfeld ¶¶ 21, 37, 157-75; Lys ¶¶ 25-41.

<sup>4</sup> See Doc. Req. Nos. 14-16, 28-29, 30, 49, 56-58 & Interrog. No. 7.

<sup>5</sup> Kooker at 3-6; see Harrison at 6-9; Harleston at 4-14.

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various changes in the industry.<sup>6</sup> SoundExchange's experts have likewise emphasized the importance of compensating copyright owners for their costs and investment, and have argued that revenue streams are diminishing due to industry changes.<sup>7</sup> The webcasting services asked a number of requests and interrogatories directly related to this testimony. Among other things, these requests sought financial statements from the record labels showing their costs and revenues, the amounts spent on certain categories of activities, analyses of digital costs and cost structure, and documents regarding trends affecting revenues.<sup>8</sup>

SoundExchange's response provides some data regarding the record labels' revenues, but appears to provide nothing on their costs. SoundExchange's objections state (at 20) that it will search for "non-privileged documents maintained in the ordinary course of business sufficient to show the witnesses' companies' annual operating costs and projections, if any such documents exist, to the extent they are directly related to SoundExchange's written direct statement." This objection-laden statement provides little assurance that requested documents related to the record labels' costs will be forthcoming, but it is even more troubling that these documents were not in SoundExchange's initial disclosures or its initial production, given that SoundExchange's own witnesses put these costs at issue, and SoundExchange has therefore known for some time these documents would need to be produced.

*Evaluation of Warner/iHeartMedia Deal.* SoundExchange's experts rely on the agreement between Warner and iHeartMedia.<sup>9</sup> Professor Rubinfeld relies on this agreement in his analysis, stating that it is one of the agreements that is "informative" for purposes of determining rates.<sup>10</sup> Ron Wilcox of Warner describes this agreement in detail, and also discusses Warner's motivations for entering this agreement.<sup>11</sup> The webcasting services accordingly asked for documents regarding the negotiation of the Warner-iHeartMedia agreement and Warner's internal evaluation of the deal.<sup>12</sup>

Based on our review, SoundExchange's production contains documents that were exchanged between Warner and iHeartMedia, but appears to exclude documents reflecting internal deliberations within Warner, including any analyses of Warner's financial expectations and other rationales for entering the agreement. SoundExchange's objections state (at 40) that it

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<sup>6</sup> See Kooker at 6-10; Harrison at ¶¶ 11-16; Harleston at ¶¶ 35-38.

<sup>7</sup> See Rubinfeld ¶¶ 46, 96, 138; Blackburn ¶¶ 42-45 & n.44.

<sup>8</sup> See Doc. Req. Nos. 11-13, 29-30, 52-54, 57, 65, 97, 99, 107 & Interrog. Nos. 6 & 7.

<sup>9</sup> Rubinfeld ¶¶ 22-24, 84, 115, 139, 150, 162, 164, 176-87; 229-32; Lys at 3 n.1, App. B.

<sup>10</sup> See Rubinfeld ¶¶ 176-187.

<sup>11</sup> See Wilcox at 7-12.

<sup>12</sup> See Doc. Req. Nos. 7, 37-39.

Glenn D. Pomerantz

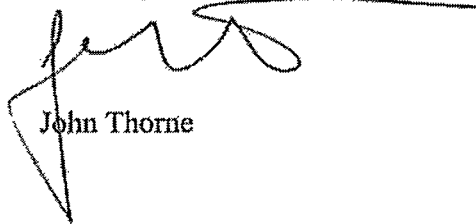
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"will conduct a reasonable search for additional documents sufficient to show WMG's value of the terms of the agreement between iHeartMedia and WMG as expressed in documents exchanged during negotiations of that agreement." But documents "exchanged during negotiations" are not the relevant or appropriate universe. Mr. Wilcox's testimony states (at 12) that "WMG agreed to enter into the Clear Channel agreement because it believed the deal provided a unique opportunity for WMG to obtain far greater consideration for the use of WMG content than WMG would obtain if Clear Channel used that content pursuant to the statutory license." We are entitled to all documents regarding Warner's analysis of the agreement, regardless of whether that analysis (or those documents) were exchanged with iHeartMedia.

Pandora, NAB, and Sirius XM have authorized us to say that they join this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "John Thorne", with a long horizontal line extending to the right.

John Thorne

# EXHIBIT D

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Re: SoundExchange's Responses to Discovery Requests  
Dkt No. 14-CRB-0001-WR (2016-2020) (Web IV)

Dear Counsel:

We write in response to your letter regarding SoundExchange's Responses to Discovery Requests dated November 11, 2014, and to follow up on our meet and confer discussion held yesterday.

As an initial matter, we note that you have mischaracterized the productions of each party. Notably, your letter fails to acknowledge the ample disclosures that SoundExchange made on October 10<sup>th</sup>. The rules contemplate fulsome initial disclosures, and by providing those SoundExchange has enabled the services to respond to its direct testimony immediately. By contrast the services' initial disclosures were sparse. Further, the massive number of documents and pages from your and the other services' production in response to our document requests

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includes duplicate and lesser included emails. In short, your numbers do not tell an accurate story here.

Regarding your specific complaints, we will address each in turn below.

*First*, we disagree with your contention that our productions related to the “promotional effect of webcasting services” were deficient.

We have produced multiple studies of promotion and substitution from each of Sony Music Entertainment (“Sony”), Warner Music Group (“WMG”) and Universal Music Group (“UMG”). We further agreed to produce (and in some cases have already produced) documents related to the financial and other resources spent on marketing and promotion, including those marketing and promotional plans for the top 10 grossing projects from Sony and UMG, where such plans existed in a final form. Additional WMG plans will be forthcoming in a supplemental production Friday, November 14<sup>th</sup>. These plans give ample detail as to the promotional and marketing efforts undertaken by the record companies on behalf of their artists, including but not limited to efforts targeted at music streaming services and terrestrial radio. These plans often include the impact of the promotional efforts expended. We also produced detailed (invoice level) information of marketing spends for several of these artists that give the utmost detail on what is done and spent to promote and market an artist in response to your requests.

We will not separately look for terrestrial radio documents. Documents related *only* to terrestrial radio are not directly related to SoundExchange’s written direct statement. We will not redact or segregate information on promotion related to terrestrial radio, but we will not look separately for them either. Additional searches for documents related to terrestrial radio are unduly burdensome in particular because such documents are not “directly related” to SoundExchange’s direct statement.

We believe searching for documents at the “corporate level” is reasonable giving the overwhelming burden of searching the scores of subsidiary record labels at offices all across the country for all of their documents. Licensees literally asked for *all* subsidiary label documents and are only now attempting to limit that in scope by naming specific individuals. The NAB has refused to look to even its witnesses’ companies for documents, whereas SoundExchange has gone well beyond its own files and imposed the burden of discovery on its witnesses’ companies. For example, in the NAB’s Request No. 8, we asked for documents relating to a statement made by Steven Newberry, but the NAB objected that the documents are not in their control. Instead, the NAB agreed only to produce “documents reviewed or relied upon by Mr. Newberry in making the quoted statements.” Similarly, when we asked for NAB members’ financial projections, they refused to give us anything because the “request by its terms also seeks documents that are not in the possession, custody, or control of NAB.” It cannot be the case that SoundExchange must produce documents from its witnesses’ companies individual labels, but the NAB does not even produce documents from its witnesses’ companies. We request that NAB take consistent positions.

November 13, 2014

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Nevertheless, in the name of compromise, we will make a reasonable attempt to obtain and produce documents sufficient to show the amounts spent at the label level for the categories of marketing and promotional costs and expenditures identified in the document requests listed in footnote 4 of your letter.

*Second*, we disagree that our production of documents related to “record label costs and revenues” was deficient.

Your letter incorrectly states that no documents related to costs were produced. As you stated in our meet and confer, you have reviewed the Bates numbered documents that we identified for you which include P&Ls and other documents showing costs, including costs for Interscope records and detailed costs for artist advances. Again, we note that the NAB has not furnished similar data and appears to join in your letter despite its deficiencies in production. If your position is that we must produce documents at the same level of detail that iHeartMedia and Pandora have, we, of course, expect that each party will likewise comply with that protocol. Any different position puts SoundExchange at a disadvantage.

As agreed, we will review the documents that you have agreed to identify for us listing iHeartMedia and Pandora’s detailed costs and will respond with whether and to what extent we believe it would be appropriate to provide similar data from the three major record labels.

*Third*, we disagree with your claim that documents related to WMG’s internal “evaluation of the Warner/iHeartMedia deal” necessarily must be produced.

Dr. Rubinfeld did not examine internal analyses or engage in any analysis of the specific intentions or expectations of the parties. Mr. Wilcox discusses the agreement as executed in October 2013. His testimony deals with those terms of the final executed agreement. You quote a single, non-specific sentence that at a very high level of generality describes Warner’s position that “the deal provided a unique opportunity to WMG to obtain far greater consideration for the use of WMG’s content than WMG would obtain if Clear Channel used that content pursuant to the statutory license.” Mr. Wilcox then outlines the terms of the deal as executed and explains why each is valuable. Accordingly, the agreement itself is clear and sufficient support for this statement.

Nonetheless, we have gone to great lengths to give you and the other participants documents related to Warner’s negotiations and negotiating position with regard to the iHeartRadio deal. Our objection here is primarily one of burden. We have already produced thousands of emails that are evidence of Warner’s expectations, beliefs, and position – as these expectations, beliefs, and positions were expressed to iHeartMedia. To the extent that you continue to believe that you are entitled to more on the grounds that you are entitled to explore Ron Wilcox’s views on Warner’s expectations, we propose to review and produce Ron Wilcox’s non-privileged internal emails from the month preceding execution of the deal. Please advise us if this is an acceptable compromise.

MUNGER, TOLLES & OLSON LLP

November 13, 2014

Page 4

Sincerely,

/s/ Rose Leda Ehler

Rose Leda Ehler

Cc: Counsel for Pandora, NAB, SiriusXM



Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES  
THE LIBRARY OF CONGRESS  
Washington, D.C.

In the Matter of

DETERMINATION OF RATES AND TERMS  
FOR DIGITAL PERFORMANCE IN SOUND  
RECORDINGS AND EPHEMERAL  
RECORDINGS (WEB IV)

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) Docket No. 14-CRB-0001-WR  
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**CERTIFICATE OF SERVICE**

I, Jackson D. Toof, hereby certify that a copy of the foregoing Movants' Motion to Compel SoundExchange to Provide All Documents Responsive to Requests for Production Related to Substitution has been served electronically by agreement of the parties on this 18th day of November, 2014, with hard copy sent by first class mail upon the following parties:

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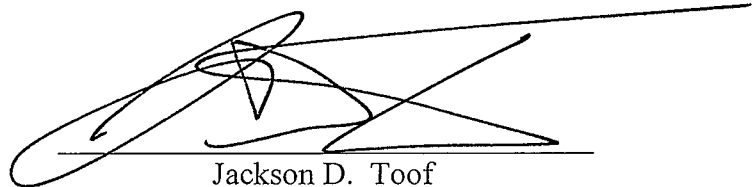
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